
**SUPREME JUDICIAL COURT
IN AND FOR THE COMMONWEALTH**

No. DAR-_____

Appeals Ct. No. 2020-P-0283

TOWN OF CONCORD,
Plaintiff/Appellee,

v.

LITTLETON WATER DEPARTMENT,
Defendant/Appellant,

&

TOWN OF ACTON,
Intervenor/Appellant.

JOINT APPLICATION FOR DIRECT APPELLATE REVIEW

For the TOWN OF LITTLETON WATER
DEPARTMENT:

Thomas Harrington (#556741)
J. Raymond Miyares (#350120)
Bryan Bertram (BBO #667102)
Katherine Stock (BBO #698127)
MIYARES AND HARRINGTON, LLP
40 Grove Street, Suite 190
Wellesley, MA 02482
617-489-1600
Tom@miyares-harrington.com
Ray@miyares-harrington.com
BBertram@miyares-harrington.com
KStock@miyares-harrington.com

For the TOWN OF CONCORD:

Peter F. Durning (BBO# 658660)
John F. Shea (BBO# 456030)
MACKIE SHEA DURNING, PC
20 Park Plaza
Suite 1001
Boston, MA 02116
617-266-5700
pdurning@mackieshea.com
jshea@mackieshea.com

(Additional counsel listed on inside cover)

For the TOWN OF ACTON:

Jeffrey L. Roelofs (BBO# 628645)

LAW OFFICES OF JEFFREY L. ROELOFS, P.C.

44 Merrimac Street

Newburyport, MA 01950

978-462-7600

jl原因@roelofslaw.com

REQUEST FOR DIRECT APPELLATE REVIEW

All parties to this appeal jointly and respectfully ask for Direct Appellate Review pursuant to Mass. R. A. P. 11, as amended, 437 Mass. 1602 (2002). As explained below, the Question presented in this appeal is one of significant importance to the present and future municipal water supplies for each of these three towns — Concord, Littleton, and Acton — and one of first impression, with interpretive importance to the Statewide *Water Management Act*, codified at G.L. c. 21G, and prior special acts that came before it, such as St. 1884, c. 201, implicated by this appeal. For those reasons, this appeal satisfies the standards for Direct Appellate Review by this Court. *See* Mass. R. A. P. 11(a)(1) and (3).

PRIOR PROCEEDINGS

This is an appeal, by the Littleton Water Department (“Littleton”) and the Town of Acton (“Acton”) from a final judgment entered by the Land Court on October 11, 2019. Addendum (“Add”).⁶² The operative complaint was filed by the Town of Concord (“Concord”) on November 8, 2018, Add.²⁰, with a single count for declaratory judgment, under G.L. c. 231A. Acton later intervened. Add.²¹⁻²². The parties—pursuant to an agreed-upon schedule—cross-moved for summary judgment and, after briefing and oral argument, the Land Court (Roberts, J.) entered a final judgment and declaration in Concord’s favor. Add.²⁶⁻⁶². Littleton and Acton timely appealed on October

31 and November 7, 2019, respectively. Add.25. The Appeals Court docketed separate appeals on February 24, 2020 (Nos. 2020-P-0275 and 2020-P-0283), which it thereafter consolidated under appeal No. 2020-P-0283.

RELEVANT FACTS AND STATUTORY BACKGROUND

Nagog Pond is a Great Pond (*Flagg v. Concord*, 222 Mass. 569, 571 (1916)), located within the Towns of Littleton and Acton. Those Towns' shared border runs through the Pond's center. In the 19th century, neither Littleton nor Acton used Nagog Pond for water supply. On Concord's petition, in 1884, the General Court enacted "An Act to Authorize the Town of Concord to Increase its Water Supply." A copy of that "1884 Act" is included in the Addendum to this Application. Add.66-69.

In pertinent part, the 1884 Act authorized Concord to supply itself with water from Nagog Pond by "tak[ing] and hold[ing] the waters" of the Pond and to "take and hold by purchase or otherwise all necessary lands" to use those waters. *See* St. 1884, c. 201, § 2. The 1884 Act, in its Section 10, also reserved certain rights to Littleton and Acton, providing: "Nothing contained in this act shall prevent the town of Acton nor the town of Littleton from taking the waters of said Nagog Pond whenever said towns or either of them may require the same for similar purposes...." *Id.* §10. That Section 10 further provided that "if from any reason the supply of water in said pond shall not be more than sufficient for the needs of the inhabitants of the towns

of Acton and Littleton, then the needs of the inhabitants of said towns shall be first supplied....” *Id.*

The *Water Management Act*, which was enacted by the General Court in 1985 and codified at G.L. c. 21G, is central to this appeal. Its purposes are set forth in the Act’s Section 3, which were summarized by this Court in *Water Department of Fairhaven v. Department of Environmental Protection*, 455 Mass. 740, 746-747 (2010). Among its provisions, the *Water Management Act* requires any “new” large-volume water withdrawals¹ to be permitted by the Massachusetts Department of Environmental Protection (“MassDEP”). The Act defines “new” withdrawals as “any withdrawal of water which is not an existing withdrawal.” The Act established that “existing” withdrawals that meet certain requirements were eligible to be “registered” with MassDEP prior to January 1, 1988. *See* G.L. c. 21G, §§ 2 & 5. Under the registration provisions in Section 5 of the Act, “existing” withdrawals, unlike “new” withdrawals, do not need to be permitted by MassDEP and are not subject to permit criteria, standards, and restrictions. *See id.* at § 7.

Concord exercised its rights under the 1884 Act in 1909 when it recorded an Instrument of Taking (Middlesex Registry of Deeds, Book 3457, Page 221), which enabled Concord to take Nagog Pond’s waters and to acquire

¹ This means water withdrawals of 100,000 gallons or more per day. G.L. c. 21G, § 4. All references to withdrawals in this Petition mean large-volume withdrawals.

several parcels along Nagog Pond for the purpose of “laying out, establishing, operating and maintaining” a water supply system. In addition to this initial taking, Concord has thereafter continued to take, acquire, and purchase land to utilize and protect Nagog Pond as municipal water supply. Concord started water withdrawals from Nagog Pond in September 1909, and Nagog Pond has continuously served as a water supply for Concord since then. Concord filed a registration statement under the *Water Management Act* with MassDEP prior to January 1, 1988, to register its historical water withdrawals from Nagog Pond. MassDEP issued a registration for Nagog Pond to Concord on May 30, 1991. To date, Littleton and Acton have not taken any of Nagog Pond’s waters.

This dispute arose because the Littleton Water Department anticipates having inadequate supply to meet future demand. Littleton’s Electric, Light & Water Department presently operates six groundwater wells that are often pumped to capacity. In connection with its municipal planning for future water needs, Littleton has identified Nagog Pond as a possible water source. Littleton thus contacted Concord and expressed an interest in using Nagog Pond’s waters pursuant to the 1884 Act. Concord asserted that the *Water Management Act* effectively repealed and superseded the 1884 Act.

That disagreement gave rise to the Land Court case below. Concord sued the Littleton Water Department, seeking a declaration pursuant to G.L. c. 231A that the *Water Management Act* impliedly repealed the 1884 Act.

Littleton takes the contrary position, as does Acton, which intervened in the case below to assert its own rights under the 1884 Act. The Land Court ultimately ruled in Concord’s favor, declaring that “the [*Water Management Act*] impliedly repealed the 1884 Act and extinguished any rights granted to Littleton and Acton thereunder.” Add.64.

STATEMENT OF THE ISSUE

Whether the *Water Management Act*, codified at G.L. c. 21G, can be interpreted harmoniously with Chapter 201 of the Acts of 1884, or whether the 1884 Act is so repugnant to and in conflict with the *Water Management Act* that the enactment of the latter impliedly repealed the former.

ARGUMENT OVERVIEW

I. Concord’s Argument

The statutory language and legislative history of the *Water Management Act* and the Supreme Judicial Court’s statutory interpretation of it in *Water Dept. of Fairhaven v. Dept. of Env’tl Protection*, 455 Mass. 740, 746-747 (2010), all support the conclusion that the later-enacted *Water Management Act* is so comprehensive on the issue of water withdrawals in the Commonwealth that it yields a clear conclusion of implied legislative intent to repeal all prior Special Acts relating to water withdrawals. *Skawski v. Greenfield Inv’rs Prop. Dev. LLC*, 473 Mass. 580, 586-87 (2016).

The *Water Management Act*'s mandates "to assure comprehensive and systematic planning and management of water withdrawals and use in the commonwealth" and to "manag[e] ground and surface water in the commonwealth as a single hydrological system and ensur[e], where necessary, a balance among competing water withdrawals and uses," G.L. c. 21G, § 3, evinced the General Court's intent to occupy the entire field of water management in the Commonwealth.

In *Fairhaven*, the Supreme Judicial Court acknowledged that the legislative history of the *Water Management Act* included the findings of the Special Legislative Commission on Water Supply, 1983 Senate Doc. No. 1826, including a reprinting of M.S. Baram & J.R. Miyares, *Groundwater: Legal and Institutional Analysis* (1982) (the "1983 Senate Report"), which "found the [then] existing legal framework to be inadequate to promote water conservation in the Commonwealth [, and] [t]o rectify the inadequacy, it proposed legislative adoption of the Act." 455 Mass. at 745-46. That prior existing legal framework consisted of "approximately 650 special acts enacted between 1840 and 1984 granting the right to take and hold waters in the Commonwealth." Add.42. The problem posed by the ad hoc legal framework encompassed by these Special Acts (including the 1884 Act) was front-and-center in the minds of the drafters of the *Water Management Act*. Indeed, part of the justification for the *Water Management Act* from the

authors of the 1983 Senate Report was the fact that “no coherent overall [water] management program exists.” *Id.*

Through their deliberations on the structure of the *Water Management Act*, the General Court settled on two tiers for approving water withdrawals: (a) registrations for existing users in G.L. c. 21G, §§ 5-6; and (b) permits for new withdrawals in G.L. c. 21G, §§ 7-9. In *Fairhaven*, the Supreme Judicial Court addressed the significance of this two-tiered system:

The [WMA] “grandfathered” a registrant’s entitlement to existing withdrawals, provided the registrant timely filed a registration statement and renewals.[] Because the registrant’s entitlement to existing withdrawals is grandfathered, the registrant is not required to obtain permission to continue existing withdrawals; it is simply required to provide information in the registration statement specified by the department’s regulations.... In contrast, withdrawal by permit can only be done, as the name implies, if permitted by the department.

Fairhaven, 455 Mass. at 747-48. Based on its analysis of the legislative history and statutory language, the Supreme Judicial Court concluded that “[t]he [WMA] thereby guarantees that any registrant that registered before January 1, 1988, and timely renewed its registration statement *may continue forever* to withdraw water at the rate of its existing withdrawal.” *Id.* (emphasis added).

It is evident from the intent and structure of the registration and permit provisions in the *Water Management Act* that the Act was enacted to cover all water withdrawals in the Commonwealth and establish the primacy of

MassDEP as the agency with the authority and technical ability to realize the General Court's vision of a comprehensive approach to managing the surface and groundwater resources of the Commonwealth as a single hydrological system. The *Water Management Act* therefore "displays on its face an intent to supersede local and special laws and to repeal inconsistent special statutes" relating to water management in the Commonwealth. Add.42. (*quoting McDonald v. Superior Court*, 229 Mass. 321, 324 (1938)).

Indeed, if the prior Special Acts were still viable, the Commonwealth would not be able to administer water withdrawals with the comprehensive authority the General Court intended to give MassDEP in the *Water Management Act*, and registrations secured under the Act would not enjoy the grandfathering protections the General Court intended. If that centralized authority had to give way to hundreds of Special Acts that were not adopted with the cohesive purpose and intent of the *Water Management Act*, the structure and aims of the *Water Management Act* would fall away.

Thus, the 1884 Act, is not in harmony with the *Water Management Act*, and, this court should uphold the Land Court's well-reasoned decision "declaring that the WMA impliedly repealed the 1884 Act and any rights granted to Littleton and Acton thereunder." Add.64.

II. Littleton and Acton's Argument

Questions of implied repeal turn foremost on harmony. Because implied repeal means disregarding Legislative text in one enactment, without express repealer text in a newer one, the doctrine is disfavored by courts and it is only where one enactment is truly “repugnant” to the other before concluding that the General Court meant to repeal, *sub silentio*, what it previously enacted. *Bridgwood v. A.J. Wood Constr., Inc.*, 480 Mass. 349, 358 (2018).² That high bar remains true for “comprehensive” statutes. *Skawski v. Greenfield Inv'rs Prop. Dev. LLC*, 473 Mass. 580, 586–87 (2016).

Harmony, here, is straightforward because the 1884 Act assigned property-based rights to the three Towns to take, hold, and use Nagog Pond while the *Water Management Act*'s purpose was to create a regulatory overlay not intended to change or disrupt any underlying rights. There is no reason that Littleton and Acton should not be able to take, hold, and use the waters of Nagog Pond, pursuant to the 1884 Act, including in priority to Concord, so long as any “new” withdrawals by Littleton or Acton are permitted by MassDEP. That serves both the purpose of the 1884 Act—which expressly reserved superior property rights to Littleton and Acton, *see* St. 1884, c.201,

² *See also Commonwealth v. Harris*, 443 Mass. 714, 725 (2005) (“Rather than mechanically applying the concept that the more ‘recent’ or more ‘specific’ statute (whichever one that is) trumps the other, we should endeavor to harmonize the two statutes....”); *Commonwealth v. Katsirubis*, 45 Mass. App. Ct 132, 135 (1998).

§10—and that of the *Water Management Act* by fully complying with MassDEP permitting requirements thus avoiding depletion of the Pond’s waters, *see* G.L. c.21G. It is no different from applying any other regulatory permitting scheme that puts requirements on an underlying property right.

The *Water Management Act*’s text, purpose, and structure all confirm Legislative intent for that harmonious result. To begin, that Act contains no repealer text—much less text plainly stating an intent to blindly repeal not just the 1884 Act but hundreds of other specialized acts that came before. *See* G.L. c.21G.³ That Act’s purpose was to coordinate Statewide water withdrawals to ensure that the combined impact of many independent water withdrawals would not deplete hydrologically connected resources, using “the “minimum level of allocation regulation consistent with its management objectives.” *See* G.L. c.21G, §3; the 1983 Senate Report. That purpose—accomplished through the Act’s MassDEP registration and permitting scheme—does not require the abrogation of pre-existing property and other rights to *use water resources* to accomplish its purpose; it requires only that the exercise of such rights for “new” withdrawals comply with those permitting requirements. And the *Water Management Act*’s legislative history shows that the General Court knew of the existence of hundreds of prior

³ *Cf. Ives Camargo's Case*, 479 Mass. 492, 498 (2018) (“The Legislature also has not used the standard language it usually includes whenever it intends to displace or supersede related provisions in all other statutes”).

special acts allocating property rights, confirming that the lack of repealer text was not an oversight but a deliberate choice.

The Land Court reached its contrary conclusion in error, by focusing narrowly on the *Water Management Act*'s "comprehensiveness." That misses the salient inquiry. While the *Water Management Act* may "assure comprehensive and systematic planning and management of water withdrawals" through its permitting scheme, *see* G.L. c.21G, §3, that does not mean that a prior special act concerning property or other water rights cannot coexist with that comprehensive permitting scheme. In fact, many if not most likely can co-exist with the *Water Management Act*, such as the 1884 Act at issue here, providing no basis for implied repeal based on "comprehensiveness."

Indeed, the Land Court's declaration crafts a dangerous interpretive principle, using only "comprehensiveness" as a guide for implied repeal and not the traditional principles of disfavor and repugnance. This case is important as a vehicle to reaffirm standards for implied repeal. Comprehensive legislation may, in certain circumstances, repeal earlier enactments by implication but mere "comprehensiveness" is not enough. Rather, even comprehensive statutes do not impliedly repeal earlier ones unless the comprehensiveness covers the "particular subject" of earlier legislation, so that the earlier legislation "frustrate[s] the purpose" of the later enactment. *Skawski*, 473 Mass. at 586–87. Because the *Water Management*

Act and 1884 *Act* can exist in harmony—including Littleton’s or Acton’s exercise of their rights—those high standards are not satisfied and the Land Court erred when deciding otherwise.

All of this, finally, is of importance to the two Towns—Littleton and Acton—who have seen their rights to access and use Nagog Pond stripped from them, notwithstanding present or future need. The original Legislative bargain that allowed Concord access to water that lies in Littleton and Acton—not Concord—included a promise to Littleton and Acton that the transfer was to aid Concord in its need, when Littleton and Acton did not need that water. The Land Court’s judgment attributes to the General Court intent to rescind that promise, bereft of explicit text or consideration of the inequity to Littleton or Acton of doing so. That promise provides even more reason to apply traditional and proper standards for implied repeal in this case. Littleton and Acton should not have important rights to the Pond taken away where the 1884 *Act* can be implemented harmoniously with and is not repugnant to the *Water Management Act*.

REASONS FOR DIRECT APPELLATE REVIEW

This appeal is appropriate for Direct Appellate Review because it presents a Question of public importance that is novel and of first impression. *See* Mass. R. A. P. 11(a)(1) and (3).

The Question is of public importance to each of Concord, Littleton, and Acton because its answer affects the rights of each to use Nagog Pond as a municipal water supply source. That is a matter of significant importance to the inhabitants of each of those three Towns.

It is also a Question of significance beyond each Towns' respective borders. The 1884 Act is one of many hundreds of prior Special Acts that implicate water-related rights, as the Land Court itself acknowledged. Add.46-60. The *Water Management Act's* intersection with such a thicket of prior law is a Question of importance Statewide. It is one fit for this Court.

The Question is also novel and one of first impression. The Land Court is the first court in the Commonwealth to analyze the *Water Management Act's* interrelationship with prior Special Acts. Moreover, while the *Water Management Act* is well over 30 years old, this Court has substantively analyzed it only once—in *Water Department of Fairhaven*—with the Appeals Court having never done so. This appeal will thus likely lead to appellate-level guidance concerning the *Water Management Act's* place in the General Laws that is otherwise in short supply. That is a job for this Court.

Respectfully submitted,

The TOWN OF CONCORD,

By its attorneys:

s/ Peter F. Durning

Peter F. Durning (BBO# 658660)

John F. Shea (BBO# 456030)

MACKIE SHEA DURNING, PC

20 Park Plaza

Suite 1001

Boston, MA 02116

617-266-5700

pdurning@mackieshea.com

jshea@mackieshea.com

March 16, 2020

The LITTLETON WATER DEPARTMENT,

By its attorneys:

s/ Bryan F. Bertram

Thomas Harrington (BBO #556741)
J. Raymond Miyares (BBO #350120)
Bryan Bertram (BBO #667102)
Katherine Stock (BBO #698127)
MIYARES AND HARRINGTON, LLP
40 Grove Street, Suite 190
Wellesley, MA 02482
617-489-1600
Tom@miyares-harrington.com
Ray@miyares-harrington.com
BBertram@miyares-harrington.com
KStock@miyares-harrington.com

March 16, 2020

The TOWN OF ACTON,

By its attorney:

s/ Jeffrey L. Roelofs

Jeffrey L. Roelofs (BBO# 628645)
LAW OFFICES OF JEFFREY L. ROELOFS, P.C.
44 Merrimac Street
Newburyport, MA 01950
978-462-7600
jlr@roelofslaw.com

March 16, 2020

CERTIFICATE OF SERVICE

I, Bryan F. Bertram, hereby certify that, on March 16, 2020, I caused the foregoing Application for Direct Appellate Review to be served on all counsel of record in this appeal. Service was made electronically, through the eFileMA system, on all counsel listed on that system's "Public List" and by first class mail, postage prepaid, on all counsel not listed on that system's "Public List." Service was made on the counsel listed below:

For the TOWN OF CONCORD:

Peter F. Durning (BBO# 658660)
John F. Shea (BBO# 456030)
MACKIE SHEA DURNING P.C.
20 Park Plaza, Suite 1001
Boston, MA 02116

For the TOWN OF ACTON:

Jeffrey L. Roelofs (BBO# 628645)
LAW OFFICES OF JEFFREY L.
ROELOFS, P.C.
44 Merrimac Street
Newburyport, MA 01950

s/ Bryan F. Bertram

Bryan Bertram

ADDENDUM

Land Court Docket (No. 18 MISC 000596)	20
Memo. of Decision Granting Plf's Mot. for Summ. J. and Denying Defs' Cross-Mot. for Summ. J. (Oct. 11, 2019)	26
Judgment (Oct. 11, 2019)	62
St. 1884, c. 201	66

18 MISC 000596 Town of Concord v. Littleton Water Department ROBERTS

- Case Type
- Miscellaneous
- Case Status
- Closed
- File Date
- 11/08/2018
- DCM Track:
-
- Initiating Action:
- EQA - Equitable Action Involving Any Right, Title or Interest in Land, G.L. Chapter 185, § 1 (k)
- Status Date:
- 10/11/2019
- Case Judge:
- Roberts, Hon. Jennifer S.D.
- Next Event:
-
-

Property Address

Nagog Pond
Acton

[All Information](#) [Party](#) [Event](#) [Docket](#) [Financial](#) [Receipt](#) [Disposition](#)

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
11/08/2018	Complaint filed.		Image
11/08/2018	Case assigned to the Average Track per Land Court Standing Order 1:04.		
11/08/2018	Land Court miscellaneous filing fee Receipt: 395248 Date: 11/08/2018	\$240.00	
11/08/2018	Land Court surcharge Receipt: 395248 Date: 11/08/2018	\$15.00	
11/08/2018	Uniform Counsel Certificate for Civil Cases filed by Plaintiff.		
11/15/2018	Event Scheduled Judge: Long, Hon. Keith C. Event: Case Management Conference Date: 01/09/2019 Time: 09:30 AM Notice sent to: Attorneys Peter Durning and John Shea Judge: Long, Hon. Keith C.		
11/20/2018	Affidavit of Service Diane Crory, Town Clerk for the Town of Littleton, filed.		
01/02/2019	Joint Statement, filed.		
01/03/2019	Defendant's Motion to Dismiss Under Mass.R.Civ.P. 12(B)(1) for Lack of Subject Matter Jurisdiction, filed.		
01/03/2019	Brief in Support of Defendant's Motion to Dismiss Under Mass.R.Civ.P. 12(B)(1) for Lack of Subject Matter Jurisdiction, filed.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
01/03/2019	Defendant's Statement of Material Facts in Support of Motion to Dismiss Under Mass.R.Civ.P. 12(B)(1) for Lack of Subject Matter Jurisdiction, filed.		
01/03/2019	Defendant's Appendix in Support of Motion to Dismiss Under Mass.R.Civ.P. 12(B)(1) for Lack of Subject Matter Jurisdiction, filed.		
01/08/2019	Partially Assented-to Joint Motion of the Town of Acton and the Water Supply District of Action to Intervene, filed.		
01/15/2019	<p>Event Resulted: Case Management Conference scheduled on: 01/09/2019 09:30 AM Has been: Event Held Hon. Keith C. Long, Presiding</p> <p>Case Management Conference and Early Intervention Event held. This action was brought in response to events prompted by Concord's efforts to build a new multimillion dollar water treatment plant in Acton near Nagog Pond, which is located along the Littleton and Acton town lines. Neither Littleton nor Acton currently use Nagog Pond as a reservoir. Concord, however, has been authorized to take water from Nagog Pond since 1884, has an existing plant and pipelines to do so, and continues to use it as a water source for its citizens. No part of Concord touches Nagog Pond, but Concord has taken by eminent domain both the land in Littleton associated with its current and future water treatment plant and the pipelines from Littleton through Acton to Concord. Concord has all necessary permits to construct the new plant. Contracts have been signed to do so, and work is scheduled to begin shortly.</p> <p>In this action Concord seeks a declaratory judgment that the Water Management Act, G.L. c. 21G (the "WMA") repealed and supersedes Chapter 201 of the Acts of 1884 (the "1884 Act") and that Concord's right to withdraw water from Nagog Pond under its WMA Registration supersedes any rights that Littleton or its water department purport to hold pursuant to § 10 of the 1884 Act. Littleton has neither applied for nor received a WMA Registration for Nagog Pond and, instead, obtains its water elsewhere.</p> <p>Citing § 10 of the 1884 Act, Littleton concedes that Concord is authorized to take waters from Nagog Pond, but contends that superior rights to those same waters were reserved for Littleton and Acton. Additionally, Littleton asserts that the 1884 Act was not repealed by the WMA, arguing that the two can exist harmoniously, and that §10 of the 1884 Act, which it contends is still good law, specifically authorizes Littleton and Acton to take water from Nagog Pond as long as Concord is paid a "just and proportionate" sum of its "water damages". Littleton further asserts that, pursuant to §10 of the 1884 Act, if Nagog Pond is ever unable to support the water needs of all three towns, Littleton's and Acton's needs take priority over Concord's.</p> <p>The Town of Acton and, separately, the Water Supply District of Acton ("AWD"), have moved to intervene in this action to assert their rights to use Nagog Pond as a future water supply pursuant to the 1884 Act. Both Concord and Littleton have assented to the intervention of the Town of Acton. Littleton has assented to AWD's intervention, but Concord will shortly be filing an opposition to AWD's attempt to intervene. With Concord's assent, the deadline for filing this opposition was set for January 18, 2019, and AWD has until February 1, 2019 to serve and file a Reply.</p> <p>On December 7, 2018, Littleton filed a Petition to the Single Justice for the Supreme Judicial Court for Suffolk County ("SJC") (Town of Littleton v. Town of Concord, (Case No. SJ-2018-0572)), which presents the same underlying issues as this case in the context of a "water damages" action. Concord has moved to dismiss that petition on the ground that it is not ripe for adjudication because Littleton has not satisfied the conditions precedent for such an action under § 10 of the 1884 Act, i.e. that Littleton is actually taking water from the pond for which it should compensate Concord. On December 24, 2018 Littleton filed a Motion with the SJC to consolidate this action with the SJC petition, consolidating the two in the SJC. Concord opposes that motion. The SJC has not yet ruled.</p> <p>In response to this court's question on whether the best way to proceed is for this court to wait for the SJC's ruling, both Concord and Littleton agreed that time is of the essence for both of them, and they wish this action to proceed pending the SJC's decision rather than being stayed awaiting it. There will be no inefficiency, they assert, because everything done in this case will be equally useful in the SJC proceeding should that case go forward rather than this one. Littleton intends to file a motion to dismiss this case for lack of subject matter jurisdiction in the Land Court. See Mass. R. Civ. P. 12(b)(1). There is also the question of whether there is an "actual controversy" at present sufficient to support a declaratory judgment action. See Bunker Hill Distrib. Inc. v. District Attorney for the Suffolk Dist., 376 Mass. 142, 144 (1978), quoting from School Comm. of Cambridge v. Superintendent of Schools of Cambridge, 320 Mass. 516, 518 (1946). Both Concord and Littleton agree that if the court denies Littleton's</p>		

Docket Date	Docket Text	Amount Owed	Image Avail.
	<p>motion to dismiss, this declaratory action should be decided pursuant to a motion for summary judgment.</p> <p>The next event in this case will be the hearing of that motion to dismiss. A hearing date will be set after it is filed and fully briefed on both sides. AWD's motion to intervene will be heard at the same time. The session clerk (Corey Pontes, Esq.) will contact all parties (including those seeking to intervene) to schedule future dates. SO ORDERED. (Long, J.)</p> <p>Notice sent to: Attorneys Peter Durning, John Shea, Mary Bassett, Bryan Bertram, Katherine Stock, Thomas Harrington, J. Raymond Miyares, Eric Reustle and Jeffrey Roelofs</p>		
01/18/2019	The Town of Concord's Opposition to Intervention by the Acton Water District, filed.		
01/28/2019	<p>Case has been REASSIGNED to the Honorable Jennifer S.D. Roberts.</p> <p>Notice sent.</p> <p>Judge: Roberts, Hon. Jennifer S.D.</p>		
01/30/2019	<p>Scheduled</p> <p>Judge: Roberts, Hon. Jennifer S.D.</p> <p>Event: 1) Defendant's Motion to Dismiss Under Mass.R.Civ.P. 12(B)(1) for Lack of Subject Matter Jurisdiction; 2) Partially Assented-To Joint Motion to Town of Action and Water Supply District of Acton to Intervene</p> <p>Date: 03/14/2019 Time: 02:00 PM</p> <p>Notice sent to: Attorney Peter F. Durning; Attorney John F. Shea, Jr.; Attorney J. Raymond Miyares; Attorney Thomas J. Harrington; Attorney Bryan F. Bertram; Attorney Katherine E. Stock; and Attorney Eric Reustle.</p>		
01/31/2019	(Proposed Intervenor) Water Supply District of Acton's Reply to Town of Concord's Opposition to Joint Motion to Intervene, filed.		
02/01/2019	The Town of Concord's Opposition to the Littleton Water Department's Motion to Dismiss, filed.		
02/01/2019	The Town of Concord's Brief IN Support of Its Opposition to the Littleton Water Department's Motion to Dismiss, filed.		
02/01/2019	The Town of Concord's Supplemental Statement of Material Facts In Support of Its Opposition to the Defendant's Motion to Dismiss, filed.		
02/01/2019	The Town of Concord's Supplemental Appendix In Support of Its Opposition to the Defendant's Motion to Dismiss, filed.		
03/13/2019	Letter from Attorney Durning with attached Judgment from Justice Budd in the SJC Matter, filed.		
03/14/2019	<p>Event: Motion scheduled 03/14/2019 02:00 PM has been resulted as follows:</p> <p>Result: Motion Hearing held on Motion to Dismiss and Partially Assented-To Joint Motion to Intervene. Attorneys Peter Durning, Bryan Bertram, Katherine Stock, Mary Bassett, and Jeffrey Roelof appeared. Court ALLOWED motion to intervene as to Town of Acton; motion to intervene taken under advisement as to Water Supply District of Acton. Motion to dismiss taken under advisement. The parties agreed to the transfer of this action to Superior Court if the motion to dismiss is granted and further agreed to a briefing schedule for summary judgment motions, to be heard by this court or transferred depending on the ruling on the motion to dismiss. Plaintiff to file and serve motion for summary judgment on or before April 19, 2019, defendants to file and serve any opposition or cross-motion on or before May 31, 2019, and plaintiff to file and serve any reply on or before June 21, 2019. Hearing on anticipated motions for summary judgment scheduled for July 11, 2019 at 10:00 A.M. if the matter is still pending in this court.</p> <p>Email notice to: Attorney Peter F. Durning; Attorney Bryan F. Bertram; Attorney Katherine E. Stock; Attorney Mary E. Bassett; and Attorney Jeffrey Roelof.</p>		
03/19/2019	<p>Memorandum of Decision Denying Defendant's Motion to Dismiss Under Mass. R. Civ. P. 12(B)(1) for Lack of Subject Matter Jurisdiction, Issued. (Copies Sent to Attorneys Peter F. Durning, John Francis Shea, J Raymond Miyares, Thomas J Harrington, Bryan F Bertram, Eric Reustle, Katherine Elizabeth Stock)</p> <p>Judge: Roberts, Hon. Jennifer S.D.</p>		Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
03/19/2019	Memorandum of Decision on The Water District of Acton's Motion to Intervene, Issued. (Copies Sent to Attorneys Peter F. Durning, John Francis Shea, J Raymond Miyares, Thomas J Harrington, Bryan F Bertram, Eric Reustle, Katherine Elizabeth Stock) Judge: Roberts, Hon. Jennifer S.D.		Image
03/21/2019	(Defendant's) Motion to Accept and Consider Post-Hearing Submission, filed.		
03/22/2019	(Defendant's) Motion to Accept and Consider Post-Hearing Submission DENIED based on counsel for Littleton's March 21, 2019 letter informing the Court that it seeks no further action on its motion to dismiss. Email notice to: Attorney Thomas J. Harrington; Attorney J. Raymond Miyares; Attorney Bryan F. Bertram; Attorney Katherine E. Stock; Attorney Peter F. Durning; and Attorney John F. Shea, Jr. Judge: Roberts, Hon. Jennifer S.D.		
04/03/2019	Defendant Town of Littleton's Answer to Plaintiff's Complaint, filed.		
04/12/2019	Scheduled Judge: Roberts, Hon. Jennifer S.D. Event: Summary Judgment Hearing Date: 07/11/2019 Time: 10:00 AM		
04/19/2019	Plaintiff's Motion for Summary Judgment, filed.		
04/19/2019	Plaintiff's Memorandum of Law In Support of Motion for Summary Judgment, filed.		
04/19/2019	Statement of Undisputed Material Facts In Support of Plaintiff's Motion for Summary Judgment, filed.		
04/19/2019	Affidavit of Alan H. Cathcart, filed.		
04/19/2019	Affidavit of Gail E. Magenau Hire, Esq. In Support of Plaintiff's Motion for Summary Judgment, filed.		
04/19/2019	Affidavit of Peter F. Durning, Esq. In Support of Plaintiff's Motion for Summary Judgment, filed.		
04/19/2019	Plaintiff's Appendix In Support of Its Motion for Summary Judgment, filed.		
04/30/2019	Letter from Attorney Durning explaining scrivener's error which necessitates replacing exhibits to two (2) documents previously submitted. Replacement Exhibits are letters E, F, G, and H. First set of Exhibits E, F, G, and H will replace Exhibits E, F, and G attached to the Affidavit of Peter Durning, filed April 19, 2019. Second set of Exhibits E, F, G, and H will replace Exhibits E, F, and G attached to the Affidavit of Peter Durning found in Plaintiff's Appendix In Support of Its Motion for Summary Judgment, filed April 19, 2019. (Note: Both sets of Exhibits E, F, G, and H have been filed April 30, 2019).		
04/30/2019	Plaintiff's Corrected Appendix In Support of Its Motion for Summary Judgment, filed.		
05/20/2019	Acton's Partially Assented-To Motion for a Minor Modification to Schedule Related to Concord's Motion for Summary Judgment (seeking a one (1) week extension of the deadline for it to respond to Concord's motion, from May 31 to June 7), filed.		
05/23/2019	Acton's Partially Assented-To Motion for a Minor Modification to Schedule Related to Concord's Motion for Summary Judgment ALLOWED. Email notice sent to: Peter F. Durning; Attorney John F. Shea, Jr.; Attorney J. Raymond Miyares; Attorney Bryan F. Bertram; Attorney Katherine E. Stock; Attorney Eric Reustle; and Attorney Jeffrey L. Roelofs. Judge: Roberts, Hon. Jennifer S.D.		
05/31/2019	The Littleton Water Department's Cross-Motion for Summary Judgment Pursuant to Mass.R.Civ.P. 56, filed.		
05/31/2019	The Littleton Water Department's Brief In Support of Its Cross-Motion for Summary Judgment and Opposition to the town of Concord's Motion for Summary Judgment, filed.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
05/31/2019	The Littleton Water Department's Response to Plaintiff's Statement of Undisputed Material Facts In Support of Motion for summary Judgment and supplemental Statement of Undisputed Material Facts In Support of Cross-Motion fro Summary Judgment, filed.		
06/10/2019	Acton's Cross-Motion for summary Judgment, filed.		
06/10/2019	Acton's Response to the Statements of Undisputed Material Facts Submitted by the Town of Concord and the Little Water Department In Support of Their Motion for Summary Judgment, filed.		
06/10/2019	Acton's Brief In Opposition to Concord's Motion for Summary Judgment and In Support of Its Cross-Motion for Summary Judgment, filed.		
06/28/2019	Plaintiff's Reply Brief In Support of Its Motion for Summary Judgment, filed.		Image
06/28/2019	Concord's Response to the Statements of Undisputed Material Facts Submitted by The Littleton Water Department and the Town of Acton, filed.		Image
06/28/2019	Supplement Affidavit of Peter F. Durning, Esq. In Support of Plaintiff's Motion for Summary Judgment, filed.		Image
07/11/2019	<p>Event Resulted: Cross-Motions for Summary Judgment Hearing scheduled on: 07/11/2019 10:00 AM</p> <p>Has been: Held. - Hearing held on parties' cross-motions for summary judgment. Attorneys Peter Durning, Bryan Bertram, Katherine Stock and Jeffrey Roelofs appeared. After hearing argument from counsel on whether the Water Management Act ("WMA") impliedly repealed the special act of 1884 ("1884 Act"), the court expressed concern about whether a decision by the court would be of any use, where Littleton and Acton agreed that, under any set of circumstances, they would still be required to apply for a permit under the WMA, which application could be denied by DEP for any number of reasons having nothing to do with whether the WMA impliedly repealed the 1884 Act. The court requested the parties' views on whether the matter could more properly be raised in the context of an appeal from a decision of DEP granting or denying a permit to Littleton, at which point the parties and the court would have the benefit of DEP's analysis (which might include its view on whether the 1884 act was impliedly repealed). The court also requested that the parties consider the practical ramifications of whatever decision the court issued (how any such decision would be implemented in view of, for example, Concord's recorded taking of all of the waters in Nagog Pond). Parties to file and serve supplemental briefs on these issues on or before September 13, 2019; parties to file and serve any response to the opposing party's supplemental brief on or before September 20, 2019. The court also invited the parties to submit supplemental affidavits, to the extent they deem it useful, regarding the existence of an actual controversy requiring prompt resolution by the court.</p> <p>Email notice to: Attorney Peter F. Durning; Attorney Bryan F. Bertram; Attorney Katherine E. Stock; and Attorney Jeffrey L. Roelofs.</p>		
09/09/2019	Assented-To Motion to Extend Schedule for Supplemental Briefing (supplemental briefs from 09/13/2019 to 09/27/2019; any response to opposing party's supplemental briefs from 09/20/2019 to 10/04/2019), filed.		Image
09/09/2019	<p>Assented-To Motion to Extend Schedule for Supplemental Briefing ALLOWED.</p> <p>Email notice to: Attorney Peter F. Durning; Attorney Bryan F. Bertram; Attorney Jeffrey L. Roelofs; Attorney Thomas J. Harrington; and Attorney John F. Shea, Jr.</p> <p>Judge: Roberts, Hon. Jennifer S.D.</p>		Image
09/27/2019	Defendant Town of Littleton Water Department's Supplemental Memorandum In Support of Its Motion for Summary Judgment, filed.		Image
09/27/2019	Affidavit of Nick Lawler In Support of Defendant Town of Littleton's Supplemental Memorandum In Support of Its Motion for Summary Judgment, filed.		Image
09/27/2019	Town of Concord's Supplemental Brief In Support of Its Motion for Summary Judgment, filed.		Image
09/27/2019	Supplemental Affidavit of Alan H. Cathcart, filed.		Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
09/30/2019	Acton's Supplemental Brief In Opposition to Concord's Motion for Summary Judgment and In Support of Its Cross-Motion for Summary Judgment, filed.		Image
10/04/2019	Town of Concord's Reply Brief to the Supplemental Briefs Filed by The Littleton Water Department and The Town of Acton, filed.		Image
10/04/2019	Defendant Town of Littleton Water Department's Reply to Concord and Acton's Supplemental Memoranda and In Further Support of Its Cross-Motion for Summary Judgment, filed.		Image
10/11/2019	Memorandum of Decision Granting Plaintiff's Motion for summary Judgment and Denying Defendants' Cross-Motions for Summary, Judgment issued. (Copies Sent to Attorneys Peter F Durning, John Francis Shea, J Raymond Miyares, Thomas J Harrington, Bryan F Bertram, Katherine Elizabeth Stock, Jeffrey L Roelofs) Judge: Roberts, Hon. Jennifer S.D.		Image
10/11/2019	Judgment entered. (Copies Sent to Attorneys Peter F Durning, John Francis Shea, J Raymond Miyares, Thomas J Harrington, Bryan F Bertram, Katherine Elizabeth Stock, Jeffrey L Roelofs) Judge: Roberts, Hon. Jennifer S.D.		Image
10/31/2019	Notice of Appeal by Littleton Water Department to the Appeals Court filed.		Image
10/31/2019	Mass.R.A.P. 9(a)(2) Statement (Defendant Littleton Water Department does not intend to order the preparation of transcripts), filed.		Image
11/07/2019	A copy of a Notice of Appeal filed on October 31, 2019 by Attorney Bryan F. Bertram for Defendant Littleton Water Department Sent to Attorney Peter F. Durning; Attorney John F. Shea, Jr.; and Attorney Jeffrey L. Roelofs.		
11/07/2019	Notice of Appeal by Town of Acton to the Appeals Court filed.		Image
11/07/2019	Mass.R.A.P. 9(a)(2) Statement (that Intervenor Tow of Acton does not intend to order the preparation of transcripts), filed.		Image
11/07/2019	A copy of a Notice of Appeal filed on November 7, 2019, by Attorney Jeffrey L. Roelofs for Defendant Intervenor Town of Acton Sent to Attorney Peter F. Durning; Attorney John F. Shea, Jr.; Attorney J Raymond Miyares; Attorney Thomas J. Harrington; Attorney Bryan F. Bertram; Attorney Eric Reustle; and Attorney Katherine E. Stock.		
11/12/2019	Notice of Change of Firm Name, Mailing Address and Email Address (Peter F. Durning, Esq. and John F. Shea, Esq.; Mackie Shea Durning, PC, 20 Park Plaza, Suite 1001, Boston MA 02116; pdurning@mackieshea.com; jshea@mackieshea.com), filed.		
02/14/2020	Notice of Assembly of Record on Appeal sent to the Clerk of the Appeals Court.		
02/14/2020	Notice of Assembly of Record on Appeal sent to all counsel of record.		
02/27/2020	Case entered in the Appeals Court as Case No. 2020-P-0283.		



COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, ss.

18 MISC 000596 (JSDR)

TOWN OF CONCORD,

Plaintiff,

v.

LITTLETON WATER DEPARTMENT,

Defendant

And

TOWN OF ACTON,

Intervenor-Defendant.

**MEMORANDUM OF DECISION
GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND
DENYING DEFENDANTS' CROSS-
MOTIONS FOR SUMMARY
JUDGMENT**

INTRODUCTION

This action was commenced by plaintiff Town of Concord ("Concord") with the filing of a complaint on November 8, 2018 against the defendant Littleton Water Department ("LWD")¹ seeking a declaration as to the extent to which LWD's claimed right to withdraw water from Nagog Pond pursuant to Chapter 201 of the Acts of 1884 ("the 1884 Act"), § 10, has been superseded by the Water Management Act, G.L. c. 21G ("WMA"), and, more particularly, the extent to which Concord's registration of rights under the WMA negates LWD's rights under the 1884 Act. On January 8, 2019, the Town of Acton ("Acton") filed a motion to intervene on the

¹ In an earlier decision in this matter, the court noted that Concord had named LWD, not the Town of Littleton ("Littleton"), as a defendant and requested that Concord determine whether LWD was the proper party to these proceedings. No motion to substitute was made thereafter, and so, for purposes of this memorandum of decision, the court treats LWD as representing Littleton's interests herein.

grounds that it, too, had rights under the 1884 Act comparable to those of Littleton, which motion was allowed by the court on March 14, 2019.²

At a hearing on March 14, 2019 on LWD's motion to dismiss this action, the parties agreed that the action should be transferred to the Superior Court, rather than dismissed, if LWD's motion was granted and that a briefing schedule for cross-motions for summary judgment should be established, to be filed and heard in this court if the motion to dismiss was denied, and to be transferred and heard in the Superior Court if the motion to dismiss was granted. A schedule was set, the motion to dismiss was denied by order dated March 19, 2019, motions and cross-motions for summary judgment and supporting papers were filed and a hearing was held on July 11, 2019. The parties thereafter filed supplemental memoranda and affidavits addressing issues raised at that hearing.

For the reasons set forth below, this court concludes that the 1884 Act was impliedly repealed by the WMA, as a result of which any rights granted to LWD and Acton under the 1884 Act were extinguished.

THE UNDISPUTED MATERIAL FACTS³

Concord petitioned the state legislature in the late 19th Century for authorization to withdraw water from Nagog Pond, a fresh water pond located along the border of the towns of Littleton and Acton. PSUMF ¶ 1. In 1884, the General Court passed *An Act to Authorize the*

² A motion to intervene was also brought on behalf of the Acton Water Department and was denied as to that entity by order dated March 19, 2019.

³ These are taken from Plaintiff's Statement Of Undisputed Material Facts ("PSUMF"), and were either admitted by LWD and Acton or were objected to by LWD on the grounds that the statements were irrelevant, that LWD had not undertaken discovery in this case, and that it should not be required to expend resources to investigate the accuracy of an immaterial statement. To the extent that the court disagrees with LWD's assessment of the relevance of these statements, it is noted that LWD did not seek relief pursuant to Mass. R. Civ. P. Rule 56(f) and did not file a motion to strike those statements. For purposes of these cross-motions only, the court accepts those statements as true. To the extent that LWD objected on the grounds that the statements were not based on admissible evidence, and the court agreed, those statements have been omitted.

Town of Concord to Increase its Water Supply, which gave Concord authorization to withdraw water from Nagog Pond and to undertake acquisitions by eminent domain to support its water withdrawal efforts. PSUMF ¶¶ 2-3.

In 1909, Concord recorded an instrument of taking in the Middlesex Registry of Deeds, Book 3457, Page 221. PSUMF ¶ 4. Since 1909, Concord has periodically obtained other parcels abutting Nagog Pond, installed an intake pipe and a dam to hold the water in Nagog Pond, and constructed a pump house, water mains, and an ozone treatment facility. PSUMF ¶¶ 5, 10, 22. Concord completed a major renovation of the dam at Nagog Pond in 2012. PSUMF ¶ 23. Presently, Concord owns approximately 40 acres of land in Littleton and 60 acres of land in Acton abutting Nagog Pond, which it acquired pursuant to the 1884 Act. PSUMF ¶ 7. Concord is presently in the process of replacing the intake pipe and constructing a new water treatment plant. Supplemental Affidavit of Alan H. Cathcart, sworn to on September 27, 2019, at ¶¶ 30-35.

In 1985, Massachusetts adopted the WMA. PSUMF ¶ 11. Pursuant to the WMA, the Massachusetts Department Of Environmental Protection (“the DEP”) adopted the regulations it deemed necessary to establish a “mechanism for managing ground and surface water in the commonwealth in a single hydrologic system ...” M.G.L. c. 21G, § 3. PSUMF ¶ 12. The DEP published regulations pursuant to the WMA at 310 CMR 36.00. PSUMF ¶ 13.

Prior to the January 1, 1988 deadline established in G.L. c. 21G, § 5, Concord filed with the DEP its registration statement documenting its historic use of Nagog Pond. PSUMF ¶ 14. In its registration statement, Concord sought registration for an aggregate of 2.1 million gallons per day (“MGD”) for its six historic water withdrawal resources, including surface and groundwater resources. PSUMF ¶ 15. Based on the underlying withdrawal volumes recorded by Concord

during the WMA Registration Eligibility Period, the volume attributable to Nagog Pond was 0.89 MGD. PSUMF ¶ 16.

DEP issued Concord a registration for Nagog Pond on May 30, 1991 and Concord has timely renewed its registration since then. PSUMF ¶¶ 20-21. LWD did not comment on any of Concord's registration renewals. PSUMF ¶ 34.

LWD did not seek to exercise any water withdrawal rights to Nagog Pond under the 1884 Act prior to the enactment of the WMA. PSUMF ¶ 30. LWD did not attempt to exercise any water withdrawal rights to Nagog Pond during the period from 1981 to 1985. PSUMF ¶ 31. LWD did not submit any comments on Concord's WMA registration statement to limit or condition Concord's registration in an effort to preserve rights that Littleton may have claimed to withdraw water from Nagog Pond under the 1884 Act. PSUMF ¶ 32. LWD registered four groundwater wells in Littleton, but did not establish or assert any active use of Nagog Pond in its registration statement. PSUMF ¶ 33.

LWD commissioned a water capacity analysis, the results of which are contained in a report entitled Water System Capacity Analysis Prepared For: Littleton Water Department Littleton MA dated July 31, 2017 ("Littleton Water Analysis"). Affidavit Of Nick Lawler In Support Of Defendant Town Of Littleton's Supplemental Memorandum In Support Of Its Motion For Summary Judgment, sworn to September 26, 2019 ("Lawler Aff."), at ¶ 8 and Ex. A. The Littleton Water Analysis projects that LWD will need additional capacity to meet expected demand on its water resources. *Id.* at ¶ 10. According to the General Manager of Littleton's Electric, Light & Water Department, Mr. Nick Lawler, any use of Nagog Pond by LWD will require a substantial commitment of time and money, as a result of which "it is imperative that Littleton and [LWD] extinguish, prior to commencing that process, the Town of Concord's

incorrect claims that Littleton lacks legal right and authority to exercise its rights to take, hold and use Nagog Pond's waters." *Id.* at 14.

On or about February 20, 2018, LWD gave notice to Concord of LWD's intent to exercise its rights under Section 10 of the 1884 Act. LWD Statement of Material Facts ("DSUMF"). Through correspondence and in meetings at various times in 2018, LWD and Concord discussed that notice of intent. DSUMF ¶ 37. LWD and Concord were unable to resolve their differences concerning the rights, interests and priorities to use the water from Nagog Pond. DSUMF ¶ 38.

Littleton is currently engaged in permitting new groundwater wells, known as "Cobbs Wells," at a site not far from Nagog Pond. Lawler Aff. ¶ 15. In proceedings before DEP, Concord has questioned the issuance of a permit for the Cobbs Wells because of a groundwater connection between those proposed wells and Nagog Pong. *Id.* at ¶ 16.

DISCUSSION

The central issue raised by these cross-motions for summary judgment is whether the WMA impliedly repealed the 1884 Act, such that LWD's and Acton's rights under the 1884 Act were thereby extinguished. There is, however, a threshold issue: whether this case presents an actual controversy ripe for resolution pursuant to G.L. c. 231A, § *et seq.*, because neither LWD nor Acton has yet applied to use the waters of Nagog Pond under the WMA, a statute to which both entities agree they are subject and under which they may be denied permits for reasons having nothing to do with the 1884 Act. As is set forth below, this court concludes that this action presents an actual controversy, and that the WMA impliedly repealed the 1884 Act.

Actual Controversy

As described in *Town of Hingham v. Dep't of Hous. & Cmty. Dev.*, 451 Mss. 501, 505 (2008), quoting *Massachusetts Ass'n of Indep. Ins. Agents & Brokers, Inc. v. Commissioner of Ins.*, 373 Mass. 290, 291 (1977) and G.L. c. 231A, § 9, “[t]he purpose of declaratory judgment is ‘to afford relief from uncertainty and insecurity with respect to rights, duties, status and other legal relations.’” “However, in order for a court to provide declaratory relief, an actual controversy – that is, a controversy appropriate for judicial resolution – must exist.” *Id.*

An actual controversy arises “where there is ‘a real dispute caused by the assertion by one party of a legal relation, status or right in which he has a definite interest, and the denial of such assertion by another party also having a definite interest in the subject matter, where the circumstances attending the dispute plainly indicate that unless the matter is adjusted such antagonistic claims will almost immediately and inevitably lead to litigation.’” *Libertarian Ass'n of Mass. v. Sec'y of the Commonwealth*, 462 Mass. 538, 546-547 (2012) quoting *School Comm. Of Cambridge v. Superintendent of Sch. Of Cambridge*, 320 Mass. 516, 518 (1946). “The phrase ‘actual controversy’ is, however, to be ‘liberally construed.’” *Wells Fargo Fin. Massachusetts, Inc. v. Mulvey*, 93 Mass. App. Ct. 768, 771 (2018), quoting *Boston v. Keene Corp.*, 406 Mass. 301, 304 (1989).

Here, all parties contend that there is an actual controversy between them that is ripe for resolution. While their consensus is not determinative, see *Perini Corp. v. Building Inspector of North Andover*, 7 Mass. App. Ct. 72, 76-77 (1979) (declining to issue declaration of rights despite request of both parties), the supplemental briefs and affidavits filed by the parties satisfy this court that there is a real dispute between them as to their respective rights under the 1884 Act and the WMA having immediate consequences. Concord continues to expend significant

time and resources preparing for the replacement of the original intake pipe at Nagog Pond and the construction of a new water treatment facility based on its right to draw water from Nagog Pond under the WMA, efforts that may be worthless if Littleton and Acton have superior rights to the waters of Nagog Pond. Littleton is currently engaged in permitting new groundwater wells in the vicinity of Nagog Pond with the DEP, and Concord has questioned that permitting in view of the impact of the proposed wells on Nagog Pond, a position that loses its merit if Concord's rights in Nagog Pond are subsidiary to Littleton's rights. Littleton also has longer range water needs that it must address, and having clarity as to its rights in Nagog Pond is important as Littleton expends significant time and money pursuing additional water resources. An actual controversy exists here.

Implied Repeal

In determining whether one statute repeals another, "it is the duty of the court to ascertain the legislative intent and to effectuate it." *Doherty v. Commissioner of Administration*, 349 Mass. 687, 690 (1965). "[T]he touchstone is 'the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied, and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.'" *Skawski v. Greenfield Investors Property Development LLC*, 473 Mass. 580, 586-587 (2016), quoting *Weems v. Citigroup, Inc.*, 453 Mass. 147, 153 (2009), quoting *Boston Police Patrolmen's Ass'n v. Boston*, 435 Mass. 718, 720 (2002).

Generally speaking, more recent statutes do not repeal earlier statutes absent express language to that effect or clear implication. *Skawski*, 473 Mass. at 586, quoting *Commonwealth v. Palmer*, 464 Mass. 773, 777 (2013) ("It is well established that '[a] statute is not to be deemed

to repeal or supersede a prior statute in whole or in part in the absence of express words to that effect or of clear implication.”). Repeal by implication is not favored. *Doherty*, 349 Mass. at 690 (principle of implied repeal “is one which the court, in deference to the Legislature, does not regard with favor and applies with caution”); *Homer v. Fall River*, 326 Mass. 673, 676 (1951) (“ordinarily the repeal of a statute by implication is not favored by the law”). Implied repeal must be by an “implication so clear that it overcomes our ‘strong presumption against implied repeal of a prior law.’” *Skawski*, 473 Mass. at 586, quoting *Dartmouth v. Greater New Bedford Reg’l Vocational Tech. Sch. Dist.*, 461 Mass. 366, 374 (2012).

However, “[i]mplied repeal is clear where ‘the earlier statute is so repugnant to and inconsistent with the later enactment covering the subject matter that both cannot stand.’” *Skawski*, 473 Mass. at 586, quoting *Dartmouth*, 461 Mass. at 374-375, and *Doherty*, 349 Mass. at 690. Accord *Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd.*, 457 Mass. 663, 673 (2010), quoting *Dedham Water Co., v. Dedham*, 395 Mass. 510, 518 (1985) (“The longstanding test for the principle of implied repeal is whether the prior statute is so repugnant to, and inconsistent with, the later enactment that both cannot stand. Only then is the former statute repealed.”); *Boston Housing Authority v. Labor Relations Com.*, 398 Mass. 715, 718 (1986). “Repugnancy and inconsistency may exist when the Legislature enacts a law covering a particular field but leaves conflicting prior prescriptions unrepealed.” *Town of Dartmouth*, 461 Mass. at 375, quoting *Doherty, supra* and citing *Homer*, 326 Mass. at 676. See also 1A Sutherland Statutory Construction § 23.9 (7th ed.) (“It has been held that courts will infer the repeal of a statute only when: (1) it is clear that a subsequent legislative act conflicts with a prior act; or (2) a subsequent act of the legislature clearly is intended to occupy the entire field covered by a prior enactment.”).

The issue of conflicts between a comprehensive statute and prior laws was addressed at some length in *Town of Dartmouth*:

“Where such a conflict does appear it is the court’s duty to give effect to the Legislature’s intention in such a way that the later legislative action may not be futile. The earlier enactment must give way.” *Doherty v. Commissioner of Admin., supra*. In such circumstances, “the legislative intent to supersede local enactments need not be expressly stated for the State law to be given preemptive effect.” *Boston Teachers Union, Local 66 v. Boston, supra*. “Where legislation deals with a subject comprehensively, it ‘may reasonable by inferred as intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of the statute would be frustrated.’” *Id.*, quoting *Bloom v. Worcester*, 363 Mass. 136, 155, 293 N.E.2d 268 (1973). See *Warr v. Hodges*, 234 Mass. 279, 281-282, 125 N.E. 557 (1920). “Thus, a statute designed to deal uniformly with a Statewide problem ‘displays on its face an intent to supersede local and special laws and to repeal inconsistent special statutes.’” *Boston Teachers Union, Local 66 v. Boston, supra*, quoting *McDonald v. Superior Court*, 299 Mass. 321, 324, 13 N.E.2d 16 (1938).

461 Mass. at 375-376.

In *Town of Dartmouth*, the Education Reform Act of 1993 was found to be a comprehensive statute governing school funding that impliedly repealed St. 1971, c. 428, which authorized the formation of a vocational regional school district and provided for an agreement between the municipalities in that district as to, among other things, the apportioning of school district expenses. In *McDonald v. Superior Court*, 299 Mass. 321 (1938), the dispute was over whether a member of the licensing board of Pittsfield could only be removed under the provisions of the special act creating the city charter, St. 1932, c. 280, § 30, which required action by the mayor and city council, or whether the act regulating alcoholic beverages passed in 1933 as St. 1933, c. 376, G.L. c. 138, providing for removal by the mayor acting alone, governed. According to the *McDonald* court:

The circumstances attendant upon the enactment of the new c. 138 show that it was the legislative purpose to deal with the whole liquor problem for the entire Commonwealth. It was enacted to take effect upon the repeal of the Eighteenth Amendment to the Constitution of the United States. Its manifest design was to deal with the problem of the control of intoxicating liquor as an entirety. That problem was State-wide. There was

importance to the uniformity in the law to govern the administration of the subject. A statute of that nature displays on its face an intent to supersede local and special laws and to repeal inconsistent special statutes. *Brown v. Lowell*, 8 Met. 172, 174. *Copeland v. Mayor & Aldermen of Springfield*, 166 Mass. 498, 504, 44 N.E. 605. *O'Connor v. Boyden*, 268 Mass. 111, 114, 167 N.E. 268.

299 Mass. at 324.

For other cases of similar import, see *Bond Liquor Store, Inc. v. Alcoholic Beverages Control Com.*, 336 Mass. 70 (1957) (“The scope of the new section 25C, which is constitutional, is such as to suggest strongly an intention ‘to cover the whole subject to which it relates.’”) (citations omitted) (holding that G.L. c. 138, § 23A, was impliedly repealed by G.L. c. 138, § 25C); *Doherty*, 349 Mass. at 690-691 (“We think that by St. 1962, c. 757, the Legislature, establishing the Executive Office for Administration and Finance, intended to cover comprehensively its structure, methods of operation and procurement of personnel) (holding that G.L. c. 7, § 4D, impliedly repealed G.L. c. 8, § 4); *Boston Housing Authority*, 398 Mass. at 719 (“the comprehensive nature of G.L. c. 150E must prevail over any limitations which might be read into G.L. c. 121B, § 29”). See also *Skawski*, 473 Mass. at 588 (“The comprehensive scope of the act ... suggests that the Legislature intended to be equally comprehensive in declaring which court departments would have original jurisdiction to adjudicate major development permit appeals.”) (holding that the 2006 enactment of G.L. c. 185, § 3A, establishing a permit session in the Land Court, impliedly repealed G.L. c. 40A, § 17, insofar as the latter statute gave jurisdiction to the Housing court to hear permit appeals).

Turning, then, to the language of the WMA,⁴ § 3 requires that DEP and the water resources commission of the Executive Office of Environmental Affairs (“the Commission”)

⁴ There have been only minor modifications to the statute since its enactment, the most notable of which are a 1990 amendment to § 5 adding provision allowing for the registration of water withdrawals of 10,000 to 99,999 gallons per day and a 2009 addition to the statute, G.L. c. 21G, § 20, requiring that well diggers and drillers be certified by DEP.

“cooperate in the planning, establishment and management of programs to assess the uses of water in the commonwealth and to plan for future water needs.” The Commission is required to “adopt principles, policies and guidelines necessary for the effective planning and management of water use and conservation in the commonwealth ... as necessary and proper to ensure an adequate volume and quality of water for all citizens of the commonwealth, both present and future.” Those principles, policies and guidelines “shall be designed . . . to assure comprehensive and systematic planning and management of water withdrawals and use in the commonwealth.” DEP “shall adopt such regulations as it deems necessary to carry out the purposes of this chapter, **establishing a mechanism for managing ground and surface water in the commonwealth as a single hydrological system and ensuring, where necessary, a balance among competing water withdrawals and uses**” (emphasis added). With reference to this language, the Supreme Judicial Court stated: “In short, water management, including water conservation, is an important purpose of the Act.” *Water Dep’t of Fairhaven v. Dep’t of Env’tl. Prot.*, 455 Mass. 740, 747 (2010).

Section 4 sets a withdrawal volume threshold of 100,000 gallons per day (“GPD”). Section 5 requires that any “person”⁵ making an existing withdrawal in excess of the threshold volume file a registration statement with DEP on or before January 1, 1988 and bars any person from continuing an existing withdrawal in excess of the threshold volume after that deadline, unless the person has complied with the requirements of the WMA and the regulations promulgated thereunder. Section 5 further requires DEP to specify a schedule of expiration dates applicable to each water source from which there are existing withdrawals for which registration

⁵ A “Person” is defined in § 2 of the act as “any agency or political subdivision of the federal government or the commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, or any officer, employee or agent of said person, or any group of said persons.”

statements can be filed, and further provides that registration statements filed for existing withdrawals from the water source shall authorize withdrawals until the next applicable expiration date, not to exceed a term of ten years. “Upon the expiration of any initial or renewal registration statement under this section, the registrant shall be entitled, upon the filing of a renewal registration statement, to continue existing withdrawals specified in the registration statement for a period of ten years.” *Id.* With reference to this language, the *Fairhaven* court stated that “[t]he Act thereby guarantees that any registrant that registered before January 1, 1988, and timely renewed its registration statement may continue forever to withdraw water at the rate of its existing withdrawal,” 455 Mass. at 742, and that “the Act ‘grandfathered’ a registrant’s entitlement to existing withdrawals, provided the registrant timely filed a registration statement and renewals.” 455 Mass. at 747.

In contrast to the grandfathered status granted to persons who registered their existing withdrawals, new users of more than the threshold volume of water were barred from making those withdrawals “unless such person obtains a permit in accordance with the regulations adopted by the department.” WMA, § 7. The WMA sets forth a number of criteria and standards for obtaining permits, including “[t]he impact of the proposed withdrawal on other water sources which are hydrologically interconnected with the water source from which the withdrawal is to be made” *id.* at § 7 (1), “[t]he water available within the safe yield of the water source from which the withdrawal is to be made,” *id.* at § 7(3), and “[t]he use to be made of the water proposed to be withdrawn and other existing, presently permitted or projected uses of the water source from which the withdrawal is to be made.” *Id.* at § 7(5). As noted in *Fairhaven*,

[t]he department, in its sound discretion, “may issue permits for any new withdrawal of water if it determines that the withdrawal will conform to the regulatory standards established,” but it must deny a permit if the proposed withdrawal would exceed the water source’s safe yield. G.L. c. 21G, § 11. In granting a permit, the department may

attach any conditions it deems necessary to further the Act's purposes or to assure compliance with its regulations. *Id.*

455 Mass. at 478.

Section 14 of the WMA authorizes DEP to issue such enforcement orders "as are reasonably necessary to aid in the enforcement provisions of this chapter." Those orders include, but are not limited to "orders modifying, suspending or revoking permits, well driller certifications under section 20 of this chapter, and orders requiring persons to cease any activity which is in violation of the provisions of this chapter or any regulations adopted hereunder." While this provision does not purport to be exhaustive, the absence of any order modifying, suspending or revoking a registration is notable.

The history behind the WMA was described by the Supreme Judicial Court in *Fairhaven*:

The Act was a direct response to call for action issued by two separate studies, one commissioned by the executive branch and the other by the Legislature, that reviewed the Commonwealth's water supply and related policies in the late 1970's and early 1980's. . . . While acknowledging that "conflicts in water use are inevitable," the 1978 Water Supply Policy Statement [commissioned by the Executive Office of Environmental Affairs] expressed dismay over the lack of a comprehensive approach to water conservation in the Commonwealth, as well as "the lack of public awareness of the limitations of the water supply and the compromises necessary to assure continued supply. The study recommended the implementation of a centralized Statewide water conservation program.

In 1977, the Legislature established a Special Legislative Commission on Water Supply (special commission), that contracted with an independent law firm with expertise in environmental law "to research existing Massachusetts and federal groundwater law to identify gaps which needed to be filled in the Commonwealth, to look at laws of other states, and **to make recommendations concerning legislation which would provide a suitable water resources management framework for Massachusetts with regard to identification of water use, protection of existing users, allocation of water among competing demands, and the integration of ground and surface water as a single hydrologic system.**" The resulting report found the existing legal framework to be inadequate to promote water conservation in the Commonwealth. To rectify the inadequacy, it proposed legislative adoption of the Act, which the Legislature in 1985 enacted essentially as proposed.

455 Mass. at 745-746 (citations omitted) (emphasis added).

The referenced report⁶ (“the 1983 Report”) includes other statements relevant to the present controversy. In its description of the WMA in its introduction, the 1983 Report states that “[t]he Act’s requirement of water withdrawal permits for subsequent new users above the threshold amount would not apply to existing withdrawals of water at the time of its effective date.” 1983 Report at 7. Furthermore, “DEQE [now DEP] regulations under this Act will establish a mechanism for managing ground and surface waters as a single hydrologic unit, in order to ensure, where necessary, an appropriate balance among competing interests.” *Id.* at 8.

“Institutional and legal inadequacies” were among the “groundwater problems” identified by the 1983 Report:

Despite the many state, regional and local authorities whose activities are focused on pieces of water management process, no coherent overall management program exists in Massachusetts. Two shortcomings of particular concern are the failure to manage ground and surface water as a single interconnected system, and the lack of a program for the management of water allocation and use in the areas where aquifer stress may make this necessary. Although some local authority exists to deal with allocation and demand management problems, particularly during water shortage emergencies, local authority is geographically limited and often does not match the regional span of underground aquifers and other water sources.

1983 Report at 12. According to the 1983 Report, “[f]or Massachusetts to develop a coherent water management program,” the Commonwealth needed to address the problem areas identified in the 1983 Report and, more particularly, “address four essential management problems,” one of which was “how to assure that water is allocated properly among those users.” *Id.* at 13.

In addition, the 1983 Report included, as “a key finding of this report,” that ground and surface water are part of a single hydrological system and “whatever restrictions are imposed on surface water withdrawals and use should be applied equally to groundwater.” 1983 Report at

⁶ Report of the Special Commission Established (Under Chapter 13 of the Resolves of 1977 and Most Recently Revived and Continued by Chapter 9 of the Resolves of 1982) To Make Investigation and Study Relative to Determining the Adequacy of the Water Supply of the Commonwealth. Senate, January 27, 1983.

17. After canvassing the available mechanisms for protecting groundwater, including the Zoning Act and the Wetlands Protection Act, the 1983 Report concluded that “[l]ocal zoning and non-zoning controls exist and their use to promote water management goals can be supervised by the state, but state regulation of the groundwater system, fully integrated with other state regulatory programs, appears to be called for.” *Id.* at 27.

The 1983 Report also considered existing methods of groundwater allocation under the common law with respect to private land owners, and under specific statutory enactments allowing public entities to withdraw or alter the flow of water, and found them to be inadequate. The authors of the 1983 Report described the WMA, with its limited requirement of a water withdrawal permit only for new withdrawals and not existing withdrawals, as “the minimum level of allocation regulation consistent with its management objectives. The resulting data gathering, registration and permitting system would enable comprehensive regulation of ground and surface water withdrawals in Massachusetts.” 1983 Report at 50.

In addition to the 1983 Report, the record in this proceeding also contains documents from the State Library of Massachusetts-Special Collections Department, Special Collection of Senator Carol C. Amick, including materials maintained by Sen. Amick as Senate Chair of the Special Commission that authored the 1983 Report. A review of those documents indicates that members of the Special Commission were aware of pre-existing water rights in Massachusetts, aware that New Jersey had done away with such rights in its statute and was expecting “massive litigation” as a result,⁷ and informed by their consultant, Mr. Miyares, that the proposed

⁷ Affidavit of Gail E. Magenau Hire, Esq., in Support of Plaintiff’s Motion for Summary Judgment dated April 17, 2019 (“Hire Aff.”), Ex. C, Memorandum from Lee Dane to Special Legislative Commission on Water Supply dated September 24, 1982.

legislation (what would become the WMA) would grandfather existing withdrawals except under emergency conditions.⁸

Based on the language of the WMA and its history, this court concludes both that the 1884 Act is repugnant to and inconsistent with the WMA and that the WMA is a comprehensive statute that was designed to address a state-wide problem—the preservation and allocation of water resources—for a resource that does not respect municipal or other political boundaries. Regarding the conflict between the two statutes, a grant to Littleton and Acton of the right to take the waters of Nagog Pond “whenever said towns or either of them require the same” and authorizing them to “take the waters of Nagog Pond or any part thereof which the town of Concord may have taken under this act” cannot be reconciled with either the WMA’s registration of Concord’s existing water withdrawal, described in *Fairhaven* as a right that “continue[s] forever” so long as the registration is timely renewed, or the WMA’s imposition of permitting requirements on Littleton and Acton, under the terms of which Littleton and Acton may, or may not, be permitted to take waters from Nagog Pond.

Regarding the comprehensive nature of the WMA and the state-wide issue—water management—that it was intended to address, the language of the statute and the history of the Act are replete with references to both. Of particular note are § 3’s requirement that the Commission adopt principles, policies and guidelines designed “to assure comprehensive and systematic planning and management of water withdrawals and use in the commonwealth,” and the WMA’s regulation of all water withdrawals by any “person” above the threshold within the Commonwealth, whether by way of registration or permit. The WMA “displays on its face an

⁸ Hire Aff. Ex. F, Memorandum from Lee Dane to Special Legislative Commission on Water Supply dated November 8, 1982.

intent to supersede local and special laws and to repeal inconsistent special statutes.” *McDonald*, 299 Mass. at 324.

The history of the WMA further supports this conclusion. The 1983 Report identified the lack of a comprehensive water management program as a key problem: “no coherent overall management program exists.” The 1983 Report described what the authors saw as necessary “to develop a coherent water management program” and recommended, among other things, that “state regulation of the groundwater system, fully integrated with other state regulatory programs, appears to be called for.”

Part of that history also includes a concern for pre-existing rights created by special acts of the Legislature, such as the 1884 Act here. The General Court chose to address that concern by registering existing water withdrawals and continuing those registrations, upon timely renewal, “forever,” presumably to avoid the “massive litigation” expected by New Jersey. The decision to grandfather pre-existing withdrawals appears to have had the desired effect: in the 34 years since the WMA was enacted, and with the exception of this case, research has not revealed any other case in the courts of Massachusetts where a party has relied on water rights granted by a special act, as opposed to the WMA, as the source of their right to take water.

A review of the special acts provides further support for the Legislature’s choice. Research has revealed approximately 650 special acts enacted between 1840 and 1984 granting the right to take and hold waters in the Commonwealth.⁹ The subjects of these acts are various: permitting municipalities to take waters within their own borders; permitting one municipality to take waters situated within another municipality’s borders; permitting one or more municipalities to take water from a particularly identified body of water; and acts incorporating water

⁹ These special acts are compiled in an appendix attached to this memorandum of decision.

companies so that they might do the same. To the extent that the recipients of those water rights were actually using them and, upon enactment of the WMA, registered their water withdrawals pursuant to them, the special acts and the WMA are consistent. Because of this grandfathering, there was no need to repeal the special acts, and the prospect of litigation over pre-existing rights was substantially diminished.

Of the approximately 650 special acts identified, this court found only four where one town was granted the right to take water from a source located in another or other towns and where those other towns were granted a priority if the water supply proved insufficient: the 1884 Act at issue here; St. 1872, c. 188, *An Act To Supply The Towns Of Concord And Lincoln With Pure Water*; St. 1911, c. 438, *An Act to Regulate The Drawing Of Water From Sandy Pond By The Towns Of Concord And Lincoln*; and St. 1910, c. 450, *An Act To Authorize The Town Of Sudbury To Supply Itself And Its Inhabitants With Water*. In another four special acts, the Legislature specified priorities between municipalities for withdrawals from a source located within or partially within the municipality's borders.¹⁰ And, in two other special acts, a water company was granted the right to take waters located within the borders of its municipality and to supply other municipalities, with the other municipalities being granted priority.¹¹

¹⁰ St. 1872, c. 335, *An Act To Supply The Towns Of Wakefield And Stoneham With Water* (granting Wakefield priority over Stoneham for waters located in Wakefield); St. 1879, c. 139, *An Act To Incorporate The Hingham Water Company* (also authorized to supply part of Hull but Hingham granted priority for waters located partially in Hingham); St. 1881, c. 59, *An Act In Addition To "An Act To Incorporate The Hingham Water Company"* (authorizing extension of service into Hull and Cohasset, but Hingham and then Hull granted priority); and St. 1912, c. 361, *An Act To Authorize The Town Of Paxton To Supply Itself And Its Inhabitants With Water* (granting Paxton authority to take the waters of Asnebumskit Pond located within its borders, but reserving sufficient water from Leicester to supply itself).

¹¹ St. 1883 c. 160, *An Act To Incorporate The East Weymouth Water Company* (granted the right to take waters from Weymouth Great Pond and to connect to the Hingham Water Company, with the Hingham, Hull and Cohasset granted priority); St. 1884, c. 108, *An Act To Incorporate The Lancaster Water Company* (granted the right to take waters from Spectacle Pond in Lancaster and can connect to the Clinton water supply, with Clinton granted priority).

In sum, out of the 650 special acts identified, only ten establish priorities between municipalities with regard to water resources. Leaving aside the 1884 Act, there is no evidence in the record as to whether any of the municipalities granted priority withdrawal rights under the other nine acts registered those rights under the WMA, thus obviating any conflict between those special acts and the WMA insofar as the allocation of water is concerned. Only one special act, the 1884 Act, has been the subject of litigation over how the grant of water rights contained therein exists within the construct of the WMA.

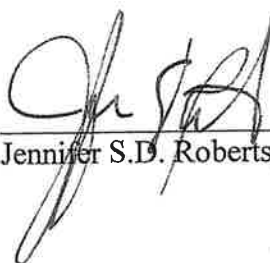
LWD argues, among other things, that the lack of express language repealing the special acts indicates a legislative intent not to repeal them and that the Legislature's concern about litigation if the special acts were terminated "provides a practical reason for the General Court's being in no rush to tinker with hundreds of prior Special Acts."¹² To the contrary, it appears that the Legislature concluded that, with the grandfathering of existing withdrawals, repeal was unnecessary and litigation would be avoided. It is reasonable to infer, instead, that the Legislature impliedly repealed the 1884 Act to the extent that it grants priority to LWD and Acton over Concord to the waters of Nagog Pond in derogation of the requirements of the WMA.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion For Summary Judgment is **ALLOWED** and The Littleton Water Department's Cross-Motion For Summary Judgment Pursuant to Mass. R. Civ. P. 56 and Acton's Cross-Motion For Summary Judgment are **DENIED**. Judgment shall

¹² The Littleton Water Department's Brief In Support Of Its Cross-Motion For Summary Judgment And In Opposition To The Town Of Concord's Motion For Summary Judgment at pp. 8, 10, 14.

enter on Concord's complaint declaring that the WMA impliedly repealed the 1884 Act and any rights granted to Littleton and Acton thereunder.



Jennifer S.D. Roberts, Associate Justice

Dated: October 11, 2019

APPENDIX

St. 1845, c. 220 An Act for supplying the City of Boston with Pure Water; St. 1846, c. 167 An Act for supplying the City of Boston with Pure Water; St. 1848, c. 265 An Act to incorporate the North Adams Water Company; St. 1848, c. 281 An Act in addition to "An Act to incorporate the Williamstown Water Company"; St. 1849, c. 187 An Act in addition to "An Act for supplying the City of Boston with Pure Water"; St. 1850, c. 273 An Act in further addition to "An Act to incorporate William Gray, junior, and others, for the purpose of bringing Fresh Water into the towns of Salem and Danvers, by subterranean pipes"; St. 1850, c. 285 An Act authorizing George W. Otis and Benjamin Iresan, Jr., to Conduct Water from an Artificial Pond to their Factory in Lynn; St. 1851, c. 210 An Act to incorporate the Stockbridge Water Company; St. 1852, c. 210 An Act for supplying the Town of Pittsfield with Pure Water; St. 1854, c. 338 An Act for supplying the City of Worcester with Pure Water; St. 1854, c. 351 An Act to authorize the Town of Plymouth to procure a supply of Water; St. 1855, c. 61 An Act in addition to an Act to Authorize the Town of Plymouth to procure a supply of Water; St. 1855, c. 435 An Act for supplying the City of Lowell with Water; St. 1856, c. 189 An Act in addition to an Act to supply the City of Worcester with Pure Water; St. 1856, c. 194 An Act authorizing the Fitchburg Gas Company to supply the Inhabitants of Fitchburg with Water; St. 1857, c. 204 An Act to incorporate the Lenox Water Company; St. 1858, c. 86 An Act in further addition to "An Act for supplying the City of Boston with Pure Water"; St. 1861, c. 105 An Act for supplying the City of Charlestown with Pure Water; St. 1861, c. 118 An Act in addition to an Act for supplying the City of Worcester with Water; St. 1861, c. 205 An Act to incorporate the Brookline Water Company; St. 1863, c. 72 An Act in addition to an Act for supplying the City of Worcester with Water; St. 1863, c. 163 An Act for supplying the City of New Bedford with Pure Water; St. 1864, c. 104 An Act for supplying the City of Worcester with Pure Water; St. 1864, c. 165 An Act to provide an additional supply of Pure Water for the City of Springfield; St. 1864, c. 268 An Act for supplying the City of Salem with Pure Water; St. 1864, c. 271 An Act in further addition to "An Act for supplying the City of Boston with Pure Water"; St. 1865, c. 57 An Act authorizing the City of Roxbury to divert the waters of Stony Brook; St. 1865, c. 177 An Act for supplying the Town of Fitchburg with Pure Water; St. 1865, c. 190 An Act for supplying the Town of Adams with Pure Water; St. 1865, c. 198 An Act for supplying the Town of Great Barrington with Pure Water; St. 1866, c. 175 An Act to supply the City of Newburyport with Pure Water; St. 1867, c. 84 An Act to supply the Town of Easthampton with Pure Water; St. 1867, c. 118 An Act to incorporate the Lenox Water Company; St. 1867, c. 208 An Act to incorporate the Spot Pond Water Company; St. 1867, c. 343 An Act to authorize the City of Roxbury to procure a supply of Water; St. 1868, c. 300 An Act to incorporate the Great Barrington Water Company; St. 1869, c. 351 An Act in addition to "An Act for supplying the City of Lowell with Water"; St. 1869, c. 462 An Act for supplying the City of Lynn with Pure Water; St. 1870, c. 95 An Act for supplying the Town of Fitchburg with Pure Water; St. 1870, c. 160 An Act in addition to an Act to incorporate the Spot Pond Water Company; St. 1870, c. 216 An Act in addition to "An Act for supplying the City of Charlestown with Pure Water"; St. 1870, c. 222 An Act for supplying the Town of Greenfield with Water; St. 1870, c. 321 An Act to amend Chapter Three Hundred and Fifty-one of the Acts of the Year Eighteen Hundred and Sixty-nine, for supplying the City of Lowell with Water; St. 1871, c. 16 An Act for supplying the Town of Northampton with Pure Water; St. 1871, c. 95 An Act to incorporate the Westfield Water Works; St. 1871, c. 133 An Act for supplying the City of Fall River with Pure Water; St.

1871, c. 218 An Act to supply the City of Lynn with Pure Water; St. 1871, c. 245 An Act relating to the Arlington Lake Water Company; St. 1871, c. 249 An Act for supplying the Town of Leominster with Pure Water; St. 1871, c. 307 An Act to supply the Town of Woburn with Pure Water; St. 1871, c. 361 An Act in addition to an Act for supplying the City of Worcester with Pure Water; St. 1871, c. 377 An Act to incorporate the Ashburnham Water Company; St. 1872, c. 62 An Act to supply the Town of Holyoke with Pure Water; St. 1872, c. 79 An Act to supply the City of Lawrence with Water; St. 1872, c. 95 An Act to authorize the Town of Milford to take and convey Water to Vernon Grove Cemetery; St. 1872, c. 177 An Act to authorize the City of Boston to obtain an additional supply of Pure Water; St. 1872, c. 188 An Act to supply the Towns of Concord and Lincoln with Pure Water; St. 1872, c. 198 An Act to authorize the Collins Paper Company to take Water from Nine-Mile Pond; St. 1872, c. 256 An Act to provide a further supply of Water for the City of Lynn; St. 1872, c. 265 An Act to supply the Town of Winchester with Pure Water; St. 1872, c. 335 An Act to supply the Towns of Wakefield and Stoneham with Water; St. 1872, c. 336 An Act to supply the Town of West Roxbury with Water; St. 1872, c. 337 An Act to supply the Town of Waltham with Water; St. 1872, c. 343 An Act to authorize the Town of Brookline to take Water from Charles River; St. 1872, c. 344 An Act to supply the Town of Newton with Water; St. 1872, c. 345 An Act to supply the City of Springfield with Water; St. 1873, c. 75 An Act to amend an Act to supply the City of Springfield with Water; St. 1873, c. 76 An Act to supply the Town of Natick with Pure Water; St. 1873, c. 77 An Act to supply the Town of Westborough with Pure Water; St. 1873, c. 184 An Act to supply the Town of West Stockbridge with Pure Water; St. 1873, c. 197 An Act for supplying South Adams with Pure Water; St. 1873, c. 271 An Act to supply the Village of Attleborough with Water for the extinguishment of fires and for other purposes; St. 1873, c. 274 An Act to establish the Lexington Water Company; St. 1873, c. 277 An Act in addition to an Act to supply the Town of Winchester with Pure Water; St. 1873, c. 322 An Act to supply the Town of Westfield with Pure Water; St. 1874, c. 125 An Act to supply the City of Newton with Water; St. 1874, c. 134 An Act to supply the Town of Orange with Pure Water; St. 1874, c. 163 An Act in addition to an Act for supplying the Town of Pittsfield with Pure Water; St. 1874, c. 191 An Act to supply the Town of Danvers with Pure Water; St. 1874, c. 208 An Act to amend an Act to supply the City of Springfield with Pure Water; St. 1874, c. 209 An Act to incorporate the Lenox Water Company; St. 1874, c. 256 An Act to supply the Town of Marlborough with Pure Water; St. 1874, c. 288 An Act to incorporate the Flax Pond Water Company; St. 1874, c. 400 An Act to authorize the City of Boston to obtain a further supply of Pure Water and establish and maintain reservoirs for the storage of Water in the Mystic Valley; St. 1875, c. 41 An Act to incorporate the Cheshire Water Company; St. 1875, c. 119 An Act to supply the Town of Southbridge with Pure Water; St. 1875, c. 158 An Act to incorporate the Rockport Water Company; St. 1875, c. 165 An Act to provide a further supply of Water for the City of Cambridge; St. 1875, c. 199 An Act to supply the Town of Watertown with Pure Water; St. 1875, c. 217 An Act to provide the City of Taunton with Pure Water; St. 1875, c. 228 An Act to preserve the purity of the Water of Lake Cochituate; St. 1876, c. 66 An Act for procuring an additional supply of Pure Water for the use of the City of Worcester; St. 1876, c. 98 An Act to supply the Town of Clinton with Pure Water; St. 1876, c. 130 An Act to supply the Town of Hingham with Pure Water; St. 1876, c. 138 An Act to incorporate the Dedham Water Company; St. 1877, c. 73 An Act to incorporate the Junction Water Company of Pittsfield; St. 1877, c. 103 An Act to incorporate the Chicopee Water Company; St. 1877, c. 121 An Act to incorporate the Athol Water Company; St. 1877, c. 122 An Act to supply the Town of Hopkinton with Water;

St. 1877, c. 142 An Act in addition to an Act for supplying the City of New Bedford with Pure Water; St. 1878, c. 29 An Act to incorporate the Lee Water Company; St. 1878, c. 80 An Act to supply the Town of Wayland with Pure Water; St. 1878, c. 140 An Act to provide a further supply of Water for the City of New Bedford; St. 1878, c. 240 An Act to supply the City of Newburyport with Water; St. 1879, c. 20 An Act to supply the Town of Middleborough with Pure Water; St. 1879, c. 139 An Act to incorporate the Hingham Water Company; St. 1879, c. 196 An Act to supply the Village of Foxborough with Pure Water; St. 1880, c. 27 An Act to incorporate the Wannacomet Water Company; St. 1880, c. 73 An Act to incorporate the Southbridge Water Supply Company; St. 1880, c. 127 An Act to incorporate the Berkshire Water Company; St. 1880, c. 179 An Act to incorporate the Amherst Water Company; St. 1880, c. 191 An Act to supply the Town of Marlborough with Pure Water; St. 1880, c. 203 An Act to supply the City of Gloucester with Pure Water; St. 1880, c. 235 An Act to incorporate the Newburyport Water Company; St. 1881, c. 59 An Act in addition to "an Act to incorporate the Hingham Water Company"; St. 1881, c. 76 An Act to incorporate the Uxbridge Water Company; St. 1881, c. 77 An Act to incorporate the Milford Water Company; St. 1881, c. 79 An Act in addition to "An Act for supplying South Adams with Pure Water."; St. 1881, c. 129 An Act in addition to the Acts for the purpose of supplying the City of Boston with Pure Water; St. 1881, c. 167 An Act to incorporate the Gloucester Water Supply Company; St. 1881, c. 171 An Act to enable the Town of Peabody to improve its Water Works and increase its Water Supply; St. 1881, c. 174 An Act to supply the Town of Weymouth with Pure Water; St. 1881, c. 206 An Act to supply the Town of Framingham with Pure Water; St. 1881, c. 267 An Act to incorporate the Lexington Water Company; St. 1881, c. 268 An Act in addition to the Acts to supply the City of Worcester with Pure Water; St. 1882, c. 14 An Act in addition to the Acts to supply the Town of Clinton with Pure Water; St. 1882, c. 69 An Act to enable the South Adams Fire District to furnish an additional supply of Water; St. 1882, c. 119 An Act to incorporate the Spencer Water Company; St. 1882, c. 142 An Act to incorporate the Revere Water Company; St. 1882, c. 145 An Act to incorporate the Gardner Water Company; St. 1882, c. 192 An Act to supply the Town of Northborough with Water; St. 1883, c. 132 An Act to supply the Town of Cottage City with Water; St. 1883, c. 149 An Act to supply the Town of Hudson with Water; St. 1883, c. 152 An Act to supply the Town of South Abington with Water; St. 1883, c. 160 An Act to incorporate the East Weymouth Water Company; St. 1883, c. 161 An Act to incorporate the Powow Hill Water Company; St. 1883, c. 162 An Act to incorporate the Quincy Water Company; St. 1883, c. 163 An Act to incorporate the Marblehead Water Company; St. 1883, c. 166 An Act to supply the Town of Wellesley with Water; St. 1883, c. 171 An Act to incorporate the Palmer Water Company; St. 1883, c. 177 An Act to incorporate the Sharon Water Company; St. 1883, c. 181 An Act to incorporate the North Attleborough Water Company; St. 1883, c. 182 An Act to incorporate the Franklin Water Company; St. 1883, c. 186 An Act in and of, and relating to a Water supply for, the North Adams Fire District; St. 1883, c. 201 An Act to incorporate the Naukeag Water Company; St. 1883, c. 247 An Act to enable Fire District Number One of Greenfield to increase its Water supply; St. 1883, c. 256 An Act authorizing the City of Lynn to take an additional Water supply; St. 1883, c. 261 An Act to authorize the Town of Natick to supply the Town of Wellesley with Water; St. 1884, c. 59 An Act to supply the Town of Middleborough with Water or to authorize the Middleborough Fire District to furnish a Water supply; St. 1884, c. 67 An Act in addition to the Acts to supply the City of Holyoke with Pure Water; St. 1884, c. 91 An Act to incorporate the Hyde Park Water Company; St. 1884, c. 106 An Act to incorporate the Holliston Water Company; St. 1884, c. 107 An Act to incorporate the

Sunderland Water Company; St. 1884, c. 108 An Act to incorporate the Lancaster Water Company; St. 1884, c. 110 An Act to incorporate the Braintree Water Company; St. 1884, c. 136 An Act to incorporate the Bradford Water Company; St. 1884, c. 137 An Act concerning a Water supply for the Fire District of the Town of Dalton; St. 1884, c. 189 An Act to enable the Athol Water Company to improve and increase its Water Supply; St. 1884, c. 201 An Act to authorize the Town of Concord to increase its Water Supply; St. 1884, c. 244 An Act to supply the Town of Abington with Water; St. 1884, c. 251 An Act to incorporate the Watertown Water Supply Company; St. 1884, c. 254 An Act authorizing the Haverhill Aqueduct Company to increase its Water Supply; St. 1884, c. 256 An Act to provide a further supply of Water for the City of Cambridge; St. 1884, c. 257 An Act to provide a further supply of Water for the Town of Waltham; St. 1884, c. 262 An Act to incorporate the Housatonic Water Company; St. 1884, c. 271 An Act to incorporate the Framingham Water Company; St. 1885, c. 82 An Act to supply the Town of Norwood with Water; St. 1885, c. 95 An Act to supply the Town of Canton with Water; St. 1885, c. 100 An Act to incorporate the Hill Water Company; St. 1885, c. 187 An Act to supply the Town of Erving with Water; St. 1885, c. 206 An Act to supply the Towns of Rockland, Abington and South Abington with Water; St. 1885, c. 217 An Act to supply the Towns of Braintree, Randolph and Holbrook with Water; St. 1885, c. 239 An Act to supply the Town of Kingston with Water; St. 1885, c. 294 An Act to furnish the Town of Beverly with Water, and to increase the supply thereof; St. 1885, c. 296 An Act to supply the Town of Belmont and its inhabitants with Water; St. 1885, c. 311 An Act to incorporate the Williamstown Water Company; St. 1885, c. 381 An Act to incorporate the Reading Water Company; St. 1886, c. 52 An Act to supply the Town of Ware with Water; St. 1886, c. 88 An Act to enable the Hingham Water Company to increase its Water supply; St. 1886, c. 127 An Act to incorporate the Plainville Water Company; St. 1886, c. 128 An Act to incorporate the Cohasset Water Company; St. 1886, c. 168 An Act in addition to an Act to supply the Town of Canton with Water; St. 1886, c. 198 An Act in addition to an Act to incorporate the Quincy Water Company; St. 1886, c. 211 An Act to incorporate the Hassanamisco Water Company; St. 1886, c. 235 An Act to incorporate the Saugus Water Company; St. 1886, c. 240 An Act to incorporate the Stoughton Water Company; St. 1886, c. 269 An Act to incorporate the Braintree Water Supply Company; St. 1886, c. 297 An Act to supply the Town of Cottage City with Pure Water; St. 1886, c. 310 An Act to incorporate the Bradford Water Company; St. 1886, c. 311 An Act to incorporate the Berkshire Heights Water Company of Great Barrington; St. 1886, c. 312 An Act to authorize the Town of Plymouth to obtain an additional supply of Water, and to issue notes, bonds or scrip for that purpose; St. 1886, c. 325 An Act to supply the Towns of Marblehead with Water; St. 1886, c. 336 An Act to supply the Village of Mansfield with Water; St. 1886, c. 353 An Act in relation to the Water supply of the City of Fall River; St. 1887, c. 152 An Act to supply the Town of Ayer with Pure Water; St. 1887, c. 157 An Act to incorporate the Vineyard Haven Water Company; St. 1887, c. 169 An Act to incorporate the North Easton Water Company; St. 1887, c. 192 An Act to incorporate the Bridgewater Water Company; St. 1887, c. 223 An Act to incorporate the Greylock Institute Water Company; St. 1887, c. 275 An Act to incorporate the Pleasant Valley Water Company; St. 1887, c. 381 An Act to amend an Act to incorporate the Berkshire Heights Water Company of Great Barrington; St. 1887, c. 388 An Act in further addition to an Act to incorporate the Spot Pond Water Company; St. 1887, c. 402 An Act to incorporate the Mansfield Water Company; St. 1887, c. 416 An Act to provide a further supply of Water for the City of Malden; St. 1887, c. 439 An Act to supply the Town of Andover with Water; St. 1888, c. 79 An Act to supply the Town of Brookfield with Pure Water; St. 1888,

c. 121 An Act to authorize the Town of Peabody to further increase and preserve its Water Supply; St. 1888, c. 131 An Act to provide an additional Water supply for the Town of Brookline; St. 1888, c. 145 An Act to amend an Act to incorporate the Powow Hill Water Company; St. 1888, c. 162 An Act to incorporate the Monson Water Company; St. 1888, c. 171 An Act to supply the Centre Village of Leicester with Water; St. 1888, c. 196 An Act to incorporate the Fairhaven Water Company; St. 1888, c. 210 An Act to provide a further Water supply for the City of Malden; St. 1888, c. 241 An Act to incorporate the Riverside Water Company; St. 1888, c. 398 An Act to supply the Town of Ashburnham with Pure Water; St. 1888, c. 404 An Act to supply the Town of Millbury with Water; St. 1888, c. 407 An Act to supply the Town of Maynard with Water; St. 1888, c. 411 An Act to incorporate the Milton Water Company; St. 1888, c. 412 An Act to incorporate the Brush Hill Water Company; St. 1888, c. 444 An Act to supply the Town of Winchendon with Water; St. 1889, c. 56 An Act to further amend an Act to supply the Town of Marblehead with Water; St. 1889, c. 144 An Act in aid of and relating to an additional Water supply for the North Adams Fire District; St. 1889, c. 155 An Act in addition to an Act for supplying the Town of Pittsfield with Pure Water; St. 1889, c. 200 An Act to authorize the Ludlow Manufacturing Company to supply the Town of Ludlow with Water and with Electricity for lighting and other purposes; St. 1889, c. 201 An Act to authorize the Town of Medford to improve its Water supply and issue bonds for the payment and refunding of a portion of its Water debt; St. 1889, c. 236 An Act to supply the Town of Avon with Water; St. 1889, c. 244 An Act concerning a Water supply for the Fire District and inhabitants of the Town of Hinsdale; St. 1889, c. 276 An Act to supply the Town of Provincetown with Water; St. 1889, c. 302 An Act to provide an additional Water supply for the City of Newton; St. 1889, c. 359 An Act to supply the Town of Ipswich with Water; St. 1889, c. 368 An Act to authorize the City of Springfield to issue additional Water bonds and to supply the Town of Ludlow with Water for certain purposes; St. 1889, c. 382 An Act authorizing the Revere Water Company to take an additional Water supply; St. 1889, c. 405 An Act to supply the Town of Reading with Water; St. 1889, c. 424 An Act to supply the Town of North Brookfield with Pure Water; St. 1889, c. 430 An Act to authorize the Stockbridge Water Company to furnish additional Water supply; St. 1890, c. 151 An Act to incorporate the Cottage City Water Company; St. 1890, c. 174 An Act to incorporate the Brant Rock Water Company; St. 1890, c. 303 An Act to provide an additional Water supply for the City of Springfield; St. 1890, c. 313 An Act to supply the Town of Ipswich with Water; St. 1890, c. 344 An Act to incorporate the Dracut Water Supply Company; St. 1891, c. 95 An Act to supply the Town of Manchester with Water; St. 1891, c. 252 An Act to supply the Town of Easthampton with Water; St. 1891, c. 253 An Act to provide an additional Water supply for the City of Waltham; St. 1891, c. 331 An Act to supply the Town of Methuen with Water; St. 1891, c. 348 An Act relating to the Water supply of the City of Haverhill; St. 1892, c. 56 An Act to authorize Fire District Number One of Attleborough to increase its Water supply; St. 1892, c. 60 An Act to authorize the City of Fitchburg to increase its Water supply; St. 1892, c. 61 An Act to supply the Town of Orange with Water; St. 1892, c. 185 An Act to provide an additional Water supply for the City of Pittsfield; St. 1892, c. 246 An Act to incorporate the Millis Water Company; St. 1892, c. 294 An Act to authorize the Town of Clinton to increase its Water supply and to incur indebtedness therefor; St. 1892, c. 310 An Act to incorporate the Methuen Water Company; St. 1892, c. 321 An Act to incorporate the Willimansett Water Company; St. 1892, c. 322 An Act to incorporate the Medfield Water Company; St. 1892, c. 326 An Act to authorize the Naukeag Water Company to increase its Water supply; St. 1892, c. 334 An Act to incorporate the Onset Water

Company; St. 1892, c. 335 An Act to incorporate the Medway Water Company; St. 1892, c. 336 An Act to authorize the Williamstown Water Company to increase its Water supply; St. 1892, c. 349 An Act to authorize the Lexington Water Company to improve and increase its Water supply; St. 1892, c. 384 An Act to authorize the City of Chicopee to introduce a public Water supply; St. 1892, c. 386 An Act to authorize the City of Marlborough to acquire an additional Water supply; St. 1892, c. 417 An Act for the protection of the Water supply of the City of Haverhill; St. 1893, c. 155 An Act to supply the Town of Webster with Water; St. 1893, c. 202 An Act to supply the Town of North Andover with Water; St. 1893, c. 206 An Act to provide for an additional Water supply for the Town of West Springfield; St. 1893, c. 214 An Act to incorporate the Millbury Water Company; St. 1893, c. 240 An Act to supply the Town of West Bridgewater with Water; St. 1893, c. 277 An Act to supply the Town of Walpole with Water; St. 1893, c. 281 An Act to incorporate the Rockport Water Company; St. 1893, c. 309 An Act to provide an additional Water supply for the Town of Melrose; St. 1893, c. 319 An Act to supply the Town of West Boylston with Water; St. 1893, c. 364 An Act to provide an additional Water supply for the City of Salem; St. 1893, c. 391 An Act to incorporate the Scituate Water Company; St. 1893, c. 393 An Act to provide a Water supply for the State Camp Ground at Framingham; St. 1893, c. 400 An Act to provide an additional Water supply for the City of Lynn; St. 1893, c. 442 An Act to authorize the Town of Whitman to take an additional Water supply; St. 1893, c. 471 An Act to supply the City of Newburyport with Water; St. 1894, c. 78 An Act to supply the Town of Rockport with Water; St. 1894, c. 179 An Act to provide for a Water supply for the Fire District and inhabitants of the Town of Chester; St. 1894, c. 187 An Act relating to the Water supply of the Towns of Stoneham and Wakefield; St. 1894, c. 215 An Act to authorize Fire District Number One of Greenfield to increase its Water supply; St. 1894, c. 289 An Act to authorize the Southbridge Water Supply Company to increase its capital stock and to take an additional source of Water supply; St. 1894, c. 290 An Act to supply the Town of Monson with Water; St. 1894, c. 362 An Act to incorporate the Blackstone Water Company; St. 1894, c. 365 An Act to incorporate the Barre Water Company; St. 1894, c. 369 An Act to incorporate the South Deerfield Water Company; St. 1894, c. 386 An Act to supply the Town of Winchendon with Water; St. 1894, c. 400 An Act to incorporate the Falmouth Heights Water Company; St. 1894, c. 417 An Act to supply the Town of Mendon with Water; St. 1895, c. 82 An Act to provide for a Water supply for the Fire District and inhabitants of the Town of Norton; St. 1895, c. 123 An Act to incorporate the Sheffield Water Company; St. 1895, c. 158 An Act to supply the Town of Rutland with Water; St. 1895, c. 191 An Act to supply the Town of Hatfield with Water; St. 1895, c. 192 An Act to supply the Town of Paxton with Water; St. 1895, c. 204 An Act to authorize the Town of North Attleborough to increase its Water supply; St. 1895, c. 205 An Act to authorize the Town of Uxbridge to increase its Water supply; St. 1895, c. 230 An Act to authorize the Leicester Water Supply District to increase its Water supply and make an additional Water loan; St. 1895, c. 235 An Act to incorporate the Plainville Water Company; St. 1895, c. 303 An Act to supply the Town of Wenham with Water; St. 1895, c. 335 An Act to authorize Fire District Number One in Greenfield to increase its Water supply; St. 1895, c. 360 An Act to incorporate the Horse Neck Water Company; St. 1895, c. 377 An Act to provide an additional Water supply for the Town of Bradford; St. 1895, c. 384 An Act to authorize the City of Worcester to increase its Water supply and make an additional Water loan; St. 1895, c. 451 An Act to supply the City of Gloucester with Water; St. 1895, c. 478 An Act relative to the protection of the Water Supply of the City of Fall River; St. 1895, c. 487 An Act to incorporate the Dighton and Somerset Water Company; St. 1896, c. 150 An Act to supply the Village of

Millers Falls with Water; St. 1896, c. 180 An Act to supply the Town of Holden with Water; St. 1896, c. 217 An Act to incorporate the Weston Water Company; St. 1896, c. 278 An Act to provide an additional Water supply for the City of Pittsfield; St. 1896, c. 419 An Act to authorize the City of Holyoke to increase its Water supply; St. 1896, c. 433 An Act relative to the Board of Water Commissioners and the Water supply of the City of Haverhill; St. 1896, c. 493 An Act to incorporate the Belchertown Water Company; St. 1897, c. 102 An Act to authorize the Town of Wellesley to obtain an additional Water supply and to make an additional Water loan; St. 1897, c. 242 An Act to enlarge and improve the Water supply of the Town of Hudson; St. 1897, c. 251 An Act to authorize the Trustees of the Medfield Insane Asylum to acquire an additional Water supply for said Asylum; St. 1897, c. 338 An Act to incorporate the Groton Water Company; St. 1897, c. 471 An Act to supply the Town of Billerica with Water; St. 1897, c. 473 An Act to supply the Town of Stoneham with Water; St. 1898, c. 66 An Act to incorporate the Falmouth Water Company; St. 1898, c. 222 An Act to provide for enlarging and improving the Water supply of the Town of Hudson; St. 1898, c. 344 An Act to provide for a Water supply for the Fire District and inhabitants of the Town of Huntington; St. 1898, c. 375 An Act to authorize the Cheshire Water Company to increase its Water supply; St. 1898, c. 385 An Act to incorporate the Northfield Water Company; St. 1898, c. 426 An Act relative to the Water supply of the Town of Needham; St. 1899, c. 267 An Act to supply the Town of Longmeadow with Water; St. 1900, c. 391 An Act to provide an additional Water supply for the Town of Brookline; St. 1900, c. 394 An Act to provide for an additional Water supply for the Hyde Park Water Company; St. 1901, c. 241 An Act to authorize the Fire District in the Town of Dalton to take water from certain brooks in the Town of Windsor; St. 1901, c. 313 An Act to authorize the temporary taking of Water for emergency purposes by Cities and Towns; St. 1901, c. 349 An Act to authorize the Town of Williamsburg to supply itself with Water; St. 1901, c. 406 An Act to authorize the Town of Norton to establish a system of Water supply or to contract for the supply of Water; St. 1901, c. 410 An Act to authorize the City of Chicopee to take an additional Water supply and to make an additional Water loan; St. 1901, c. 508 An Act to authorize the City of Lynn to take an additional Water supply; St. 1902, c. 122 An Act to authorize the Town of Hamilton to supply itself and its inhabitants with Water; St. 1902, c. 129 An Act to authorize the Town of Ashfield to supply itself with Water; St. 1902, c. 145 An Act to amend the Charter of the Scituate Water Company and to authorize said Company to acquire additional Water supply; St. 1902, c. 163 An Act to authorize the Town of Lexington to obtain an additional Water supply; St. 1902, c. 182 An Act to authorize the Town of Williamsburg to increase its Water supply and to incur indebtedness or the purpose; St. 1902, c. 193 An Act to authorize the Town of Easthampton to take an additional Water supply and to make an additional Water loan; St. 1902, c. 245 An Act to authorize the Great Barrington Fire District to increase its Water supply and to issue bonds for that purpose; St. 1902, c. 285 An Act to authorize the Town of Sunderland to supply itself and its inhabitants with Water; St. 1902, c. 287 An Act to authorize the Town of Gardner to supply itself and its inhabitants with Water; St. 1902, c. 307 An Act to supply the Town of Milton with Water; St. 1902, c. 351 An Act to authorize the City of Worcester to increase its Water supply; St. 1902, c. 486 An Act to provide for supplying the Village of South Deerfield with Water, and for establishing the South Deerfield Water Supply District; St. 1902, c. 488 An Act to provide for supplying the Town of Wakefield with Water; St. 1903, c. 105 An Act to authorize the Town of Shrewsbury to supply itself with Water; St. 1903, c. 119 An Act to provide for supplying Shirley Village with Water, and for establishing the Shirley Village Water District; St. 1903, c. 139 An Act relative to the Water supply of the Town of Williamsburg; St. 1903, c. 172 An Act to

incorporate the Barnstable Water Company; St. 1903, c. 184 An Act to authorize the Town of Groveland to supply itself with Water; St. 1903, c. 186 An Act to authorize the Town of Russell to supply itself with Water; St. 1903, c. 197 An Act relative to the rights of the Town of Whately in the Waters of Roaring Brook; St. 1903, c. 198 An Act relative to the Water supply of the Amherst Water Company; St. 1903, c. 217 An Act to incorporate the Ashfield Water Company; St. 1903, c. 240 An Act to incorporate the Conway Water Company; St. 1903, c. 281 An Act to authorize the Town of Merrimac to supply itself and its inhabitants with Water; St. 1904, c. 77 An Act relative to the Water supply of the Ashfield Water Company; St. 1904, c. 86 An Act to authorize the Town of Wrentham to supply itself with Water; St. 1904, c. 193 An Act to incorporate the Oxford Water Company; St. 1904, c. 225 An Act to authorize the Town of Uxbridge to increase its Water supply; St. 1904, c. 235 An Act to incorporate the Aspinwall Water Company; St. 1905, c. 389 An Act to provide for an increased Water supply for the City of Lawrence; St. 1905, c. 469 An Act to provide for supplying Water to the Danvers Insane Hospital; St. 1905, c. 477 An Act to provide for a Water supply system for the Town of Winthrop; St. 1907, c. 131 An Act to authorize the Town of Bedford to supply itself with Water; St. 1907, c. 175 An Act to incorporate the Westford Water Company; St. 1907, c. 178 An Act to provide for a Water supply for the Wareham Fire District and the inhabitants of Wareham; St. 1907, c. 268 An Act to authorize the Town of Marion to supply itself with Water; St. 1907, c. 380 An Act relative to the Water supply system of the Town of Framingham; St. 1907, c. 478 An Act to authorize the Town of Manchester to take additional sources of Water supply; St. 1907, c. 483 An Act to authorize the Town of Provincetown to supply itself with Water.; St. 1907, c. 514 An Act to authorize the City of Pittsfield to take the Waters of Roaring Brook as an additional Water supply; St. 1907, c. 515 An Act relative to the Aspinwall Water Company; St. 1908, c. 111 An Act to authorize the Town of Pepperell to supply itself and its inhabitants with Water; St. 1908, c. 283 An Act to establish the Blandford Fire District and to provide for supplying the same with Water; St. 1908, c. 291 An Act to authorize the Town of Medway to supply itself and its inhabitants with Water; St. 1908, c. 310 An Act to establish the Belchertown Fire District and to provide for supplying the same with Water; St. 1908, c. 403 An Act relative to the Water supply of the City of Newburyport; St. 1908, c. 404 An Act to authorize the Town of Plainville to supply itself and its inhabitants with Water; St. 1908, c. 406 An Act to amend the Charter of the Choasset Water Company; St. 1908, c. 449 An Act to establish the Lake Pleasant Water Supply District in the Town of Montague and to provide for supplying the same with Water; St. 1908, c. 451 An Act to authorize the Town of Manchester to take additional sources of Water supply; St. 1908, c. 456 An Act to authorize the Town of Ashland to supply itself and its inhabitants with Water; St. 1908, c. 490 An Act relative to the Water supply of the Town of Brookfield; St. 1908, c. 548 An Act relative to the Wannacomet Water Company; St. 1908, c. 592 An Act to provide for an additional Water supply for the Fire District and inhabitants of the Town of Huntington; St. 1908, c. 618 An Act to incorporate the Sagamore Water Company; St. 1909, c. 226 An Act to authorize the City of Waltham to take additional sources of Water supply; St. 1909, c. 252 An Act to authorize the Town of Dudley to supply itself and its inhabitants with Water; St. 1909, c. 337 An Act to authorize the Town of Douglas to supply itself and its inhabitants with Water; St. 1909, c. 406 An Act to authorize the City of Chicopee to take an additional Water supply and to make an additional Water loan; St. 1909, c. 462 An Act relative to the Williamstown Water Company; St. 1910, c. 286 An Act relative to the Berkshire Water Company; St. 1910, c. 337 An Act relative to the Water supply for Fire District Number Two in the Town of South Hadley; St. 1910, c. 381 An Act to supply

with Water the Villages of Cherry Valley and Rochdale in the Town of Leicester, and to incorporate the Cherry Valley and Rochdale Water District; St. 1910, c. 402 An Act to authorize the Town of Middleton to supply itself and its inhabitants with Water; St. 1910, c. 432 An Act to authorize Fire District Number One in the Town of Greenfield to take additional sources of Water supply; St. 1910, c. 450 An Act to authorize the Town of Sudbury to supply itself and its inhabitants with Water; St. 1910, c. 466 An Act to incorporate the Norton Water Company; St. 1910, c. 486 An Act to incorporate the Granville Centre Water Company; St. 1910, c. 595 An Act to incorporate the Somerset Water Company; St. 1910, c. 613 An Act to provide for a Water supply for the Town of Millbury; St. 1911, c. 226 An Act to establish the Dighton Water Supply District and to provide for supplying the same with Water; St. 1911, c. 233 An Act to establish the Worthington Fire District and to provide for supplying the same with Water; St. 1911, c. 245 An Act to establish the East Foxborough Water Supply District and to provide for supplying said District with Water; St. 1911, c. 248 An Act to authorize the Town of Hanover to supply itself and its inhabitants with Water; St. 1911, c. 286 An Act to incorporate the Barnstable Water Company; St. 1911, c. 373 An Act to authorize the Town of West Brookfield to supply itself and its inhabitants with Water; St. 1911, c. 407 An Act to authorize the City of Pittsfield to take as an emergency supply the Waters of Roaring Brook and Onota Lake; St. 1911, c. 408 An Act to establish the Deerfield Fire District and to provide for supplying the same with Water; St. 1911, c. 525 An Act to incorporate the Tewksbury Water Company; St. 1911, c. 559 An Act to authorize the Town of Norwood to provide an additional Water supply and to make an additional Water loan; St. 1911, c. 617 An Act to authorize the Town of Littleton to supply itself and its inhabitants with Water; St. 1911, c. 640 An Act to authorize the Town of Peabody to extend and increase its system of Water supply; St. 1911, c. 641 An Act to establish the West Groton Water Supply District; St. 1911, c. 644 An Act to provide for a Water supply for the Shelburne Falls Fire District and its inhabitants; St. 1912, c. 220 An Act to authorize the Town of Mattapoisett to supply itself with Water; St. 1912, c. 326 An Act to establish the West and South Water Supply District of Acton and to provide for supplying said District with Water; St. 1912, c. 328 An Act to authorize the Town of Ashburnham to supply itself and its inhabitants with Water; St. 1912, c. 350 An Act to incorporate the Belchertown Water Company; St. 1912, c. 361 An Act to authorize the Town of Paxton to supply itself and its inhabitants with Water; St. 1912, c. 436 An Act to incorporate the South Egremont Water Company; St. 1912, c. 612 An Act to incorporate the North Egremont Water Company; St. 1913, c. 128 An Act to authorize the Town of Sharon to increase and extend its Water supply; St. 1913, c. 345 An Act to establish the Luther's Corners Water Supply District in the Town of Seekonk; St. 1913, c. 497 An Act to authorize Fire District Number One in the Town of Greenfield to take additional sources of Water supply; St. 1913, c. 561 An Act to authorize the Town of Sandwich to supply itself with Water.; St. 1913, c. 641 An Act to establish the Chelmsford Water District; St. 1913, c. 661 An Act to authorize the Town of Blackstone to supply itself with Water; St. 1913, c. 683 An Act to provide for an additional Water supply for the City of Newton; St. 1913, c. 684 An Act to provide for an additional Water supply for the Town of Brookline; St. 1913, c. 698 An Act to authorize the Town of Peabody to increase its Water supply; St. 1913, c. 699 An Act to authorize the Town of Danvers to increase its Water supply; St. 1913, c. 700 An Act to provide an additional Water supply for the Cities of Salem and Beverly; St. 1914, c. 109 An Act relative to the authority of the City of North Adams to take land, Water rights and Water courses for Water supply purposes; St. 1914, c. 254 An Act to authorize the Town of Somerset to supply itself and the Town of Swansea with Water; St. 1914, c. 313 An Act to establish the Duxbury Fire and Water District and to provide for

supplying the same with Water; St. 1914, c. 319 An Act to authorize the Town of Cummington to supply itself with Water; St. 1914, c. 339 An Act to incorporate the Lunenburg Water Company; St. 1914, c. 417 An Act to authorize the Town of Pembroke to supply itself with Water, to purchase Water from the Towns of Abington and Rockland and to sell Water to the Town of Hanover; St. 1914, c. 488 An Act to incorporate the Norwell Water Company; St. 1914, c. 550 An Act to incorporate the Cummington Water Company; St. 1914, c. 613 An Act to incorporate the Marshfield Water Company; St. 1914, c. 685 An Act to incorporate the Humarock Beach Water Company; St. 1914, c. 772 An Act to authorize the Town of Blackstone to take additional land for Water supply purposes; St. 1915, c. 232 An Act to establish the South Easton and Eastondale Fire and Water District; St. 1915, c. 243 An Act to incorporate the Salisbury Water Supply Company; St. 1915, c. 267 An Act to authorize the Town of Warren to supply itself and its inhabitants with Water; St. 1915, c. 281 An Act to authorize the Town of Georgetown to supply itself and its inhabitants with Water; St. 1915, c. 287 An Act to authorize the Town of Belchertown to supply itself and its inhabitants with Water; St. 1915, c. 322 An Act to Authorize the Town of Sterling to supply itself and its inhabitants with Water; St. 1915, c. 375 An Act to incorporate the Cape Cod Water Company; St. 1916, c. 227 An Act to authorize the Town of Bernardston to supply itself and its inhabitants with Water; St. 1916, c. 238 An Act to authorize the Town of Rowley to supply itself and its inhabitants with Water; St. 1916, c. 260 An Act to authorize the Town of Wenham to supply itself and its inhabitants with Water; St. 1916, c. 302 An Act to authorize the City of Fall River to increase and protect its Water supply; St. 1916, c. 320 An Act to authorize the Town of Hanson to supply itself with Water and to purchase Water from the City of Brockton and the Towns of Rockland and Abington; St. 1916, c. 344 An Act to authorize the Town of Dunstable to supply itself and its Inhabitants with Water; St. 1917, c. 150 An Act relative to the Water supply of the Town of Ashland; St. 1917, c. 175 An Act to authorize the Town of Dighton to supply itself with Water and to sell Water to adjoining Towns; St. 1917, c. 267 An Act to incorporate the Monterey Water Company; St. 1917, c. 287 An Act to authorize the Town of Sturbridge to supply itself and its inhabitants with Water; St. 1917, c. 290 An Act to incorporate the North Reading Water Company; St. 1917, c. 314 An Act to authorize the Town of Gosnold to supply itself with Water; St. 1918, c. 172 An Act to establish the Erving Water District and to provide for supplying the same with Water; St. 1919, c. 115 An Act relative to the taking of Water from the Ipswich River by the Cities of Lynn, Peabody, Salem and Beverly and the Town of Danvers; St. 1919, c. 203 An Act to establish the Tewksbury Fire and Water District; St. 1919, c. 241 An Act to incorporate the Auburn Water Company; St. 1920, c. 390 An Act to establish the Warren Water District; St. 1920, c. 391 An Act to authorize the Town of Townsend to supply itself and its inhabitants with Water; St. 1920, c. 405 An Act to authorize the Town of Marshfield to supply itself and its inhabitants with Water; St. 1920, c. 543 An Act to authorize Palmer Fire District Number One of Palmer to establish a system of Water supply; St. 1920, c. 639 An Act to authorize the Town of Stockbridge to supply itself and its inhabitants with Water; St. 1921, c. 205 An Act authorizing the Town of Medfield to supply itself and its inhabitants with Water; St. 1922, c. 150 An Act establishing the Acushnet Fire and Water District; St. 1922, c. 327 An Act authorizing the Department of Mental Diseases to acquire an additional Water supply for the Gardner State Colony; St. 1922, c. 505 An Act to establish the Belchertown Water District in the Town of Belchertown; St. 1923, c. 257 An Act to incorporate the Fieldston Water Company; St. 1923, c. 341 An Act establishing the Housatonic Fire and Water District in the Town of Great Barrington; St. 1923, c. 348 An Act authorizing the Town of Clinton to take Water for Water supply purposes from the Wachusett Reservoir of the

Metropolitan Water System; St. 1923, c. 474 An Act establishing the Fayville Fire and Water District in the Town of Southborough; St. 1923, c. 490 An Act to incorporate the Harwich Water Company; St. 1924, c. 326 An Act to authorize the Town of Auburn to supply itself and its inhabitants with Water; St. 1924, c. 400 An Act authorizing the Cities of Fall River, New Bedford and Taunton to increase and protect their Water supply; St. 1924, c. 408 An Act authorizing the Onset Fire District to take over the Onset Water Company and thereafter to establish and maintain a general Water supply system; St. 1924, c. 445 An Act to establish the Lynnfield Water District in the Town of Lynnfield; St. 1925, c. 15 An Act authorizing the Town of Bridgewater to supply itself and its inhabitants with Water; St. 1925, c. 60 An Act establishing the Baldwinville Water District in the Town of Templeton and authorizing it to take sources of Water supply in the Towns of Templeton and Winchendon; St. 1925, c. 75 An Act establishing the Sterling Water District in the Town of Sterling; St. 1925, c. 119 An Act to authorize the Town of Westwood to supply itself and its inhabitants with Water; St. 1925, c. 128 An Act relative to the Water supply of the Town of Wakefield; St. 1925, c. 261 An Act to authorize the Town of Millville to supply itself and its inhabitants with Water; St. 1925, c. 277 An Act authorizing the Department of Public Health to acquire an additional Water supply for the Lakeville State Sanatorium; St. 1925, c. 282 An Act to provide additional Water supply for the City of Attleboro; St. 1926, c. 15 An Act to authorize the Baldwinville Water District in the Town of Templeton to take Water from a certain pond or lake and its watershed in the Town of Phillipston; St. 1926, c. 200 An Act authorizing the Town of Danvers to take additional sources of Water supply in the Town of Middleton and improve its Water system; St. 1926, c. 276 An Act to authorize the Town of Wilmington to supply itself and its inhabitants with Water, and to sell Water to the Commonwealth and to the Towns of Reading, North Reading and Tewksbury and to the City of Woburn; St. 1926, c. 318 An Act relative to emergency Water supply; St. 1926, c. 324 An Act to authorize the City of Leominster to take the Waters of Monoosnoc Brook, a tributary of Nashua River, for an addition to its water supply, and to improve its Water system; St. 1926, c. 339 An Act authorizing the Town of Somerset to obtain additional sources of Water supply and to supply the Town of Dighton with Water; St. 1926, c. 346 An Act to incorporate the Chatham Water Company; St. 1927, c. 321 An Act making additional provision for the Water supply needs of the Metropolitan Water District and for communities which now or hereafter may require Water therefrom, by the development of an adequate future Water supply from the Swift River; St. 1928, c. 61 An Act further extending the time during which the Cities of Lynn, Peabody, Salem and Beverly and the Town of Danvers may take Water from the Ipswich River for emergency purposes; St. 1929, c. 153 An Act relative to additional Water supply for the Amherst Water Company; St. 1929, c. 311 An Act authorizing the Town of Tewksbury to supply itself and its inhabitants with Water, and to buy Water from or sell Water to the Towns of Wilmington and Andover, the City of Lowell and the Commonwealth; St. 1929, c. 324 An Act to authorize the Town of Methuen to take the Waters of Peter's Pond and Bartlett's Brook and their tributaries in the Towns of Methuen and Dracut for an addition to its Water supply and to improve its Water system; St. 1929, c. 330 An Act establishing the North Seekonk Water District of Seekonk; St. 1930, c. 39 An Act authorizing the Town of Hanover to supply itself and its inhabitants with Water; St. 1930, c. 69 An Act authorizing the Shelburne Falls Fire District to take Water from additional sources; St. 1930, c. 93 An Act establishing the Bernardston Fire and Water District; St. 1930, c. 225 An Act establishing the South Seekonk Water District of Seekonk; St. 1930, c. 280 An Act authorizing the Town of Pembroke to supply itself and its inhabitants with Water; St. 1931, c. 149 An Act authorizing the Town of Norwell to

supply itself and its inhabitants with Water; St. 1931, c. 172 An Act to authorize the Town of Burlington to supply itself and its inhabitants with Water, and to sell Water to the City of Woburn; St. 1931, c. 232 An Act authorizing the Town of Raynham to supply itself and its inhabitants with Water; St. 1931, c. 235 An Act relative to emergency Water supply; St. 1931, c. 339 An Act authorizing the Town of Southampton to supply itself and its inhabitants with Water; St. 1931, c. 340 An Act relative to the taking of the Waters of Quinapoxet River and South Wachusett Brook and their tributaries by the City of Worcester for Water supply purposes; St. 1931, c. 410 An Act authorizing the City of Pittsfield to take Waters and other property for the purpose of increasing its Water supply; St. 1931, c. 425 An Act establishing the West Warren Water District; St. 1931, c. 239 An Act establishing the Pinecroft Water District of West Boylston and authorizing the City of Worcester to supply said District with Water; St. 1933, c. 229 An Act authorizing the Department of Correction to acquire an additional Water supply for the Bridgewater State Farm; St. 1933, c. 339 An Act establishing the East Chelmsford Water District of Chelmsford; St. 1933, c. 352 An Act establishing the West Boylston Water District of West Boylston; St. 1934, c. 53 An Act authorizing the Cheshire Water Company to acquire, hold and protect further sources of Water supply in the Town of Cheshire; St. 1934, c. 100 An Act establishing the Sudbury Water District of Sudbury; St. 1934, c. 102 An Act establishing the Whately Fire and Water District in the Town of Whately; St. 1934, c. 261 An Act authorizing the Town of Essex to supply itself and its inhabitants with Water; St. 1935, c. 165 An Act authorizing the Town of Harwich to supply itself and its inhabitants with Water; St. 1935, c. 220 An Act establishing the Easton Center Water District in the Town of Easton; St. 1935, c. 230 An Act establishing the South Chelmsford Water District of Chelmsford; St. 1935, c. 244 An Act authorizing the Cotuit Fire District to supply itself and its inhabitants with Water for the extinguishment of fires and for domestic use; St. 1935, c. 256 An Act authorizing the Town of Braintree, for the purpose of increasing its Water supply, to take, hold and use certain Waters and Lands within said Town; St. 1935, c. 385 An Act establishing the Woodland Water District in the Town of Auburn; St. 1935, c. 386 An Act establishing the Elm Hill Water District in the Town of Auburn; St. 1936, c. 38 An Act authorizing the Town of West Newbury to supply itself and its inhabitants with Water and validating action taken in relation to such Water supply prior to such authorization; St. 1936, c. 48 An Act authorizing the Town of North Reading to supply itself and its inhabitants with Water; St. 1936, c. 298 An Act establishing the Ring's Island Water District in the Town of Salisbury; St. 1936, c. 321 An Act authorizing the Bernardston Fire and Water District to develop a Water supply in the Town of Bernardston and relative to exempting certain property in said District from taxes assessed by it; St. 1936, c. 336 An Act establishing the Maple Hillside Water District of Millbury; St. 1937, c. 104 An Act authorizing the Town of Harvard to supply itself and its inhabitants with Water; St. 1937, c. 138 An Act establishing the Topsfield Water District of Topsfield; St. 1937, c. 145 An Act establishing the Buzzard's Bay Water District in the Town of Bourne; St. 1937, c. 169 An Act authorizing the Centerville-Osterville Fire District to supply itself and its inhabitants with Water; St. 1937, c. 179 An Act Establishing the Manchaug Water District of Sutton; St. 1938, c. 10 An Act authorizing the Town of West Springfield to take Water from additional sources in Southwick and Westfield and to supply Water to Southwick; St. 1938, c. 252 An Act providing for the establishment of the Berkshire Village Fire and Water District; St. 1938, c. 255 An Act providing for the establishment of the Lanesborough Village Fire and Water District; St. 1938, c. 269 An Act relative to Water supply sources for the Housatonic Water Works Company; St. 1938, c. 441 An Act establishing the Bourne Water District in the Town of Bourne; St. 1939, c. 290 An Act

establishing the North Sagamore Water District in the Town of Bourne; St. 1939, c. 336 An Act establishing the Lynnfield Center Water District in the Town of Lynnfield; St. 1941, c. 197 An Act further extending the time during which the Cities of Lynn, Peabody, Salem and Beverly and the Town of Danvers may take Water from the Ipswich River for emergency purposes; St. 1941, c. 408 An Act further regulating the taking and holding by the Town of West Springfield of Water Within the Town of Southwick; St. 1941, c. 521 An Act authorizing the Dracut Water Supply District to obtain additional resources of Water supply; St. 1941, c. 568 An Act establishing the Charlton Water District in the Town of Charlton; St. 1941, c. 636 An Act to authorize the Town of Newbury to supply itself and its inhabitants with Water; St. 1941, c. 644 An Act authorizing the Town of Southborough to take Water for Water supply purposes from the pressure aqueduct and tunnel of the Metropolitan Water System; St. 1943, c. 325 An Act authorizing the Three Rivers Fire District of the Town of Palmer to establish a system of Water supply; St. 1945, c. 262 An Act establishing the South Sagamore Water District in the Town of Bourne; St. 1945, c. 277 An Act establishing the Dennis Water District in the Town of Dennis; St. 1945, c. 314 An Act establishing the Dennis South Water District in the Town of Dennis; St. 1945, c. 381 An Act establishing the Seekonk Water District of Seekonk; St. 1945, c. 606 An Act relative to the taking of Water for public Water supply purposes in certain cases of emergency; St. 1945, c. 618 An Act relative to the source of Water supply of the Towns of Rockland, Abington and Whitman; St. 1946, c. 11 An Act to authorize the Town of Rowley to supply itself and its inhabitants with Water; St. 1946, c. 220 An Act establishing the Upton Center Water District in the Town of Upton; St. 1946, c. 320 An Act establishing the Thorndike Fire and Water District in the Town of Palmer; St. 1946, c. 528 An Act authorizing the Town of Mendon to supply itself and its inhabitants with Water; St. 1947, c. 198 An Act relative to the Water supply of the Cherry Valley and Rochdale Water District; St. 1947, c. 222 An Act establishing the Raynham Center Water District in the Town of Raynham; St. 1947, c. 280 An Act to establish the Sandwich Water District in the Town of Sandwich; St. 1947, c. 285 An Act authorizing the City of Pittsfield to take Waters and other property for the purpose of increasing its Water supply; St. 1947, c. 419 An Act establishing the Byfield Water District in the Town of Newbury; St. 1947, c. 465 An Act relative to the acquisition of additional Water supply by the Town of Marion; St. 1947, c. 481 An Act relative to the acquisition of additional Water supply by the Town of Scituate; St. 1947, c. 496 An Act to authorize the Town of Norwell to supply itself and its inhabitants with Water; St. 1947, c. 585 An Act establishing the Auburn Water District in the Town of Auburn; St. 1948, c. 353 An Act authorizing the Town of Templeton to supply itself and its inhabitants with Water; St. 1948, c. 461 An Act establishing the Dunstable Water District in the Town of Dunstable; St. 1948, c. 485 An Act establishing the South Grafton Water District in the Town of Grafton; St. 1949, c. 137 An Act establishing the Swansea Water District in the Town of Swansea; St. 1949, c. 414 An Act to establish the Gilbertville Water District in the Town of Hardwick; St. 1949, c. 419 An Act establishing the Morningdale Water District in the Town of Boylston; St. 1949, c. 483 An Act establishing the North Raynham Water District in the Town of Raynham; St. 1949, c. 635 An Act establishing the Burlington Water District in the Town of Burlington; St. 1950, c. 82 An Act authorizing the Town of Halifax to supply itself and its inhabitants with Water; St. 1950, c. 338 An Act to regulate the drawing of Water from Upper Naukeag Pond by the Towns of Winchendon and Ashburnham; St. 1950, c. 358 An Act establishing the Hillcrest Water District in the Town of Leicester; St. 1950, c. 359 An Act establishing the Dighton Water District in the Town of Dighton, and repealing Acts establishing the Dighton Water Supply District and the South Dighton Fire and Water District;

St. 1950, c. 369 An Act authorizing the Town of Westminster to supply itself and its inhabitants with Water; St. 1950, c. 616 An Act establishing the Sunderland Water District in the Town of Sunderland; St. 1950, c. 632 An Act authorizing the Town of Norwood to increase its source of Water supply; St. 1951, c. 61 An Act authorizing the Town of Tewksbury to supply itself and its inhabitants with Water; St. 1951, c. 314 An Act authorizing the Town of Freetown to supply itself and its inhabitants with Water; St. 1951, c. 421 An Act establishing the Boylston Water District in the Town of Boylston; St. 1951, c. 464 An Act to establish the Wheelwright Water District in the Town of Hardwick; St. 1951, c. 598 An Act establishing the Kenwood Water District in the Town of Dracut; St. 1951, c. 651 An Act authorizing the Town of Clarksburg to supply itself and its inhabitants with Water; St. 1951, c. 732 An Act authorizing the City of Fitchburg to acquire Waters and other property for the purpose of increasing its Water supply; St. 1951, c. 748 An Act authorizing the North Easton Village District to increase and protect its Water supply; St. 1952, c. 415 An Act authorizing the Town of Southborough to take Water for Water supply purposes from the Sudbury Reservoir; St. 1952, c. 439 An Act authorizing the Town of Provincetown to supply itself and its inhabitants with Water; St. 1953, c. 105 An Act establishing the Westhampton Water District in the Town of Westhampton; St. 1953, c. 107 An Act establishing the Montague Center Water District in the Town of Montague; St. 1953, c. 217 An Act authorizing the Barnstable Fire District to supply itself and its inhabitants with Water for the extinguishment of fires and for domestic use from sources outside the limits of the Barnstable Fire District and within the Town of Barnstable; St. 1953, c. 271 An Act authorizing the Centerville-Osterville Fire District to supply itself and its inhabitants with Water for the extinguishment of fires and for domestic use from sources outside of the limits of the Centerville-Osterville Fire District and within the Town of Barnstable; St. 1953, c. 357 An Act establishing the Kalmia Woods Water District in the Town of Concord; St. 1953, c. 418 An Act authorizing the Town of Orleans to supply itself and its inhabitants with Water; St. 1953, c. 659 An Act authorizing the City of Holyoke to increase its Water supply; St. 1954, c. 112 An Act relative to the Cherry Valley and Rochdale Water District; St. 1955, c. 664 An Act establishing the Mount Pleasant Water District in the Town of Leicester; St. 1960, c. 392 An Act authorizing the Southbridge Water Supply Company to take an additional source of Water supply in the Town of Sturbridge; St. 1961, c. 502 An Act relative to the acquisition of additional Water supply by the Town of Amherst and authorizing the Town of Amherst to sell Water within the Town of Belchertown; St. 1961, c. 628 An Act to authorize the City of Springfield to increase its Water supply; St. 1962, c. 470 An Act establishing the Griswoldville Water District in the Town of Colrain; St. 1962, c. 540 An Act to authorize the South Deerfield Water Supply District to obtain an additional Water supply; St. 1962, c. 566 An Act authorizing the Turners Falls Fire District to take Water from additional sources and to sell Water to certain individuals; St. 1963, c. 436 An Act authorizing the Town of Nantucket to supply itself and its inhabitants with Water; St. 1963, c. 788 An Act establishing the Holmes Park Water District in the Town of Westminster; St. 1964, c. 249 An Act authorizing the South Deerfield Water Supply District to obtain an additional Water supply; St. 1965, c. 450 An Act establishing the Northfield Water District in the Town of Northfield; St. 1965, c. 552 An Act authorizing the Town of Brewster to supply itself and its inhabitants with Water; St. 1965, c. 734 An Act establishing the West Northfield Water District in the Town of Northfield; St. 1965, c. 872 An Act authorizing the City of Gloucester to obtain an additional source of Water supply by diverting Water from the Ipswich River; St. 1966, c. 315 An Act authorizing the West Barnstable Fire District to supply itself and its inhabitants with Water; St. 1966, c. 457 An Act authorizing the Department of

Natural Resources to acquire certain Lands and Waters within the Farmington River Watershed; St. 1967, c. 343 An Act authorizing the City of Gloucester to obtain Water from the Ipswich River; St. 1968, c. 590 An Act authorizing the City of Pittsfield to acquire certain Waters and other property in the Towns of Dalton, Hinsdale and Windsor for the purpose of increasing its Water supply; St. 1968, c. 606 An Act authorizing the Lynnfield Center Water District to use and sell the Waters of the Ipswich River; St. 1969, c. 302 An Act establishing the Bondsville Fire and Water District and dissolving the Bondsville Fire District; St. 1969, c. 746 An Act authorizing the City of Pittsfield to take the Water rights to Onota Lake in said City; St. 1969, c. 844 An Act authorizing the County Commissioners of Berkshire County to take the Water rights to Richmond Pond by eminent domain; St. 1970, c. 274 An Act establishing the Riverside Water District in the Town of Gill; St. 1971, c. 145 An Act Establishing the West Warren Water District in the Town of Warren; St. 1971, c. 433 An Act establishing the Whately Water District in the Town of Whately; St. 1971, c. 835 An Act establishing the Oakwood Heights Water District of Millbury; St. 1972, c. 583 An Act authorizing the Town of Weymouth to develop all Ground Water and Surface Water sources within the boundaries of said Town; St. 1972, c. 808 An Act establishing the Oldtown Water District in the Town of Newbury; St. 1976, c. 408 An Act authorizing the Town of North Reading to obtain Water from the Ipswich River; St. 1976, c. 456 An Act authorizing the Town of Ipswich to obtain Water from the Ipswich River; St. 1976, c. 476 An Act establishing Stiles Lake Water District in parts of the Towns of Leicester and Spencer; St. 1977, c. 268 An Act authorizing the Town of Danvers to obtain Water from the Ipswich River; St. 1977, c. 404 An Act establishing the Granby Water District in the Town of Granby; St. 1977, c. 532 An Act authorizing the City known as the Town of Methuen to obtain Water from the Merrimack River; St. 1980, c. 267 An Act establishing the Ashfield Water District in the Town of Ashfield; St. 1980, c. 483 An Act establishing the Briggsville Water District in the Town of Clarksburg; St. 1981, c. 341 An Act authorizing the Town of Tewksbury to take Water from the Merrimack River; St. 1982, c. 25 An Act relative to previously abandoned sources of Water supply by members of the Metropolitan Water District; St. 1982, c. 270 An Act providing for an adequate Water supply for the City of Brockton; St. 1982, c. 516 An Act establishing the Tyngsborough Water District.

(SEAL)

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, ss.

18 MISC 000596 (JSDR)

TOWN OF CONCORD,

Plaintiff,

v.

LITTLETON WATER DEPARTMENT,

Defendant,

And

TOWN OF ACTON;

Intervenor-Defendant.

JUDGMENT

This action was commenced by plaintiff Town of Concord (“Concord”) with the filing of a complaint on November 8, 2018 against the defendant Littleton Water Department (“LWD”) seeking a declaration as to the extent to which LWD’s claimed right to withdraw water from Nagog Pond pursuant to Chapter 201 of the Acts of 1884 (“the 1884 Act”), § 10, has been superseded by the Water Management Act, G.L. c. 21G (“WMA”), and, more particularly, the extent to which Concord’s registration of rights under the WMA negates LWD’s rights under the 1884 Act. On January 8, 2019, the Town of Acton (“Acton”) filed a motion to intervene on the grounds that it, too, had rights under the 1884 Act comparable to those of the Town of Littleton (“Littleton”), which motion was allowed by the court on March 14, 2019.

Cross-motions for summary judgment and supporting papers were filed and a hearing was held on July 11, 2019. Thereafter, the parties filed supplemental memoranda and affidavits

addressing issues raised at that hearing. The court has determined in a decision of even date that summary judgment shall issue declaring that the 1884 Act was impliedly repealed by the WMA, as a result of which any rights granted to Littleton and Acton under the 1884 Act were extinguished.

In accordance with the court's decision, it is hereby

ORDERED that Plaintiff's Motion For Summary Judgment is **ALLOWED** and The Littleton Water Department's Cross-Motion For Summary Judgment Pursuant to Mass. R. Civ. P. 56 and Acton's Cross-Motion For Summary Judgment are **DENIED**.

It is further

ORDERED, **ADJUDGED**, and **DECLARED** on Concord's complaint that the WMA impliedly repealed the 1884 Act and extinguished any rights granted to Littleton and to Acton thereunder.

It is further

ORDERED and **ADJUDGED** that this Judgment is a full adjudication of the parties' claims in this case, and all prayers for relief by any party to this action that are not granted in the preceding paragraphs are denied.

SO ORDERED.

By the court (Roberts, J.)

Attest:

Deborah J. Patterson, Recorder

Dated: October 11, 2019

A TRUE COPY
ATTEST:

Deborah J. Patterson
RECORDER

twenty-nine of the Public Statutes and any acts in amendment thereof or in addition thereto so far as the same are applicable.

SECTION 4. This act shall take effect upon its acceptance by a two-thirds vote of the voters of said town present and voting thereon at a legal town meeting called for the purpose within two years from its passage.

Subject to acceptance by a two-thirds vote.

Approved April 30, 1884.

AN ACT TO AUTHORIZE THE TOWN OF CONCORD TO INCREASE ITS WATER SUPPLY.

Chap. 201

Be it enacted, etc., as follows:

SECTION 1. The town of Concord, in addition to the powers now conferred upon it by law, is hereby authorized to supply itself and its inhabitants and other persons, towns and corporations on the line of its water works with pure water to extinguish fires, generate steam and for domestic and other purposes, and may establish public fountains and hydrants and regulate their use, and discontinue the same, and may collect rates to be paid for the use of the water.

May increase water supply.

SECTION 2. Said town, for the purposes aforesaid, may take and hold the waters of Nagog Pond, so called, in the towns of Acton and Littleton and the waters which flow into and from the same, and may also take and hold by purchase or otherwise all necessary lands for raising, holding, diverting, purifying and preserving such waters, and conveying the same to any and all parts of said town of Concord, and may erect thereon proper dams, reservoirs, buildings, fixtures and other structures, and make excavations and embankments, and procure and operate machinery therefor; and for such purposes may construct and lay down, dig up and repair conduits, pipes and other works in, under or over any lands, water courses or railroads, and along any street, highway, alley or other way, in such manner as not unnecessarily to obstruct the same, and may dig up, raise and embank any such lands, street, highway, alley or other way in such manner as to cause the least hindrance to travel thereon.

May take waters of Nagog Pond in Acton and Littleton.

SECTION 3. Instead of taking the entire waters of said Nagog Pond, said town of Concord may, if it shall so elect, take a part of said waters, such election to be made by a vote of said town declaring the quantity or proportion of said waters to be so taken.

Quantity of water to be taken subject to a vote of the town.

To file in registry of deeds a description of land and water taken.

SECTION 4. Within ninety days after the time of taking any lands, waters or water courses as aforesaid, otherwise than by purchase, said town shall file in the registry of deeds for the southern district of the county of Middlesex a description thereof sufficiently accurate for identification, with a statement of the purpose for which the same is taken, signed by a majority of the water commissioners of said town; and if said town shall have made the election authorized by section three of this act, said description and statement shall be accompanied by a copy of the vote of said town signifying such election.

May, by vote, take an increased proportion of waters.

SECTION 5. Said town of Concord, if it shall have made the election authorized by section three of this act, may thereafter from time to time, if it shall so elect, take an increased proportion of said waters, each successive election to be made by a vote of said town declaring the additional quantity or proportion of said waters to be so taken, and upon each such successive election and within ninety days thereafter said town shall file in said registry of deeds a description, statement and copy of the vote therefor as provided for in section four of this act.

Water to be measured.

SECTION 6. If said town shall make the election authorized by section three of this act, said town shall provide a reliable means or method of measuring and registering the amount of water taken, such register or record to be at all times accessible to any interested parties.

Liability for damages.

SECTION 7. The said town of Concord shall pay all damages sustained by any person in property by the taking of any land, right of way, water, water source, water right or easement, or by any other thing done by said town under the authority of this act; said damages to be based and proportioned in case of the taking of water or water rights upon the amount of water taken as aforesaid. Any person or corporation sustaining damages as aforesaid under this act, who fails to agree with said town as to the amount of damages sustained, may have the damages assessed and determined in the manner provided by law when land is taken for the laying out of highways, on application at any time within three years from the time when the water is actually withdrawn or diverted, and not thereafter. No application for the assessment of damages shall be made for the taking of any water, water right, or for any injury thereto, until the

Application for damages not to be made until water is actually withdrawn.

water is actually withdrawn or diverted by said town under the authority of this act.

SECTION 8. Said town of Concord, for the purposes herein authorized, may from time to time borrow money and issue notes, bonds or scrip therefor to an amount not exceeding fifty thousand dollars in addition to the amount already authorized by law in the manner and under the restrictions provided by section four of chapter one hundred and eighty-eight of the acts of the year eighteen hundred and seventy-two.

May borrow money and issue bonds, etc.

SECTION 9. The board of water commissioners of said town of Concord shall execute, superintend and direct the performance of all the works, matters and things mentioned in this act and exercise all the rights, powers and privileges hereby granted to said town and not otherwise specifically provided for herein, subject to the vote of said town. The provisions of sections seven, eight, nine and ten of chapter one hundred and eighty-eight of the acts of the year eighteen hundred and seventy-two shall apply to this act as if inserted herein.

Water commissioners to have charge of works.

SECTION 10. Nothing contained in this act shall prevent the town of Acton nor the town of Littleton from taking the waters of said Nagog Pond whenever said towns or either of them may require the same for similar purposes, and in case of such taking by either of said towns or both of them, if from any reason the supply of water in said pond shall not be more than sufficient for the needs of the inhabitants of the towns of Acton and Littleton, then the needs of the inhabitants of said towns shall be first supplied; and if either of said towns of Acton or Littleton shall hereafter be authorized to take and shall take the waters of said Nagog Pond or any part thereof which the town of Concord may have taken under this act, said town so taking shall pay to said Concord a just and proportionate part of whatever sums the said town of Concord shall have paid or become liable to pay for water damages to any persons or corporations for the taking of water rights from said pond or the outlet thereof, to be ascertained, if the parties shall fail to agree, by three commissioners to be appointed upon the application of either party by the supreme judicial court; the report of said commissioners made after hearing the parties, and returned to and accepted by said court shall be final between the said parties.

Acton and Littleton not prevented from taking waters of Nagog Pond.

If water is taken, towns to pay just proportion of damages.

Commonwealth
may take water
from Nagog
Pond.

SECTION 11. The Commonwealth of Massachusetts shall have the right to take from said Nagog Pond, for use in buildings owned by said Commonwealth in the town of Concord, an amount of water not exceeding two hundred thousand gallons per day, and the said right is hereby reserved. If the said Commonwealth shall take from said pond its waters, or any part thereof, which the town of Concord may have taken under this act, otherwise than by contract with said town of Concord, the said Commonwealth shall pay to said town of Concord a just and proportionate part of whatever sums the said town of Concord shall have paid or become liable to pay for water damages to any persons or corporations for the taking of water rights from said pond or the outlet thereof, to be ascertained and determined as is provided for in section ten of this act. But if upon the expiration of the contract made on the first day of October in the year eighteen hundred and eighty-three between the said town of Concord and said Commonwealth to provide for the delivery of water from the Concord water works for use within the walls of the state prison, said town of Concord by its water commissioners shall renew said contract for five years on the terms named therein, or shall tender to the governor of the Commonwealth a renewal of said contract for five years on the terms named therein, with the option upon the part of said Commonwealth of a further renewal for a term of twenty years upon said terms, then the right of said Commonwealth herein provided for shall cease.

Contract be-
tween Concord
and the Com-
monwealth.

Subject to ac-
ceptance by
town of Concord
within one year.

SECTION 12. This act shall take effect upon its passage, but shall become void unless it is accepted by a vote of said town of Concord at a legal meeting held for the purpose within one year from its passage.

Approved April 30, 1884.

Chap. 202

AN ACT TO INCORPORATE THE HIGHLAND CONGREGATIONAL CHURCH
IN LOWELL.

Be it enacted, etc., as follows:

Corporators.

SECTION 1. James G. Buttrick, William L. Davis, Cyrus B. Emerson, John T. Carter, Hamden Spiller, Lucy R. Carter, Almira Sturtevant, Clara S. Spiller and all other members of the Highland Congregational Church in Lowell, and their successors as members of said